

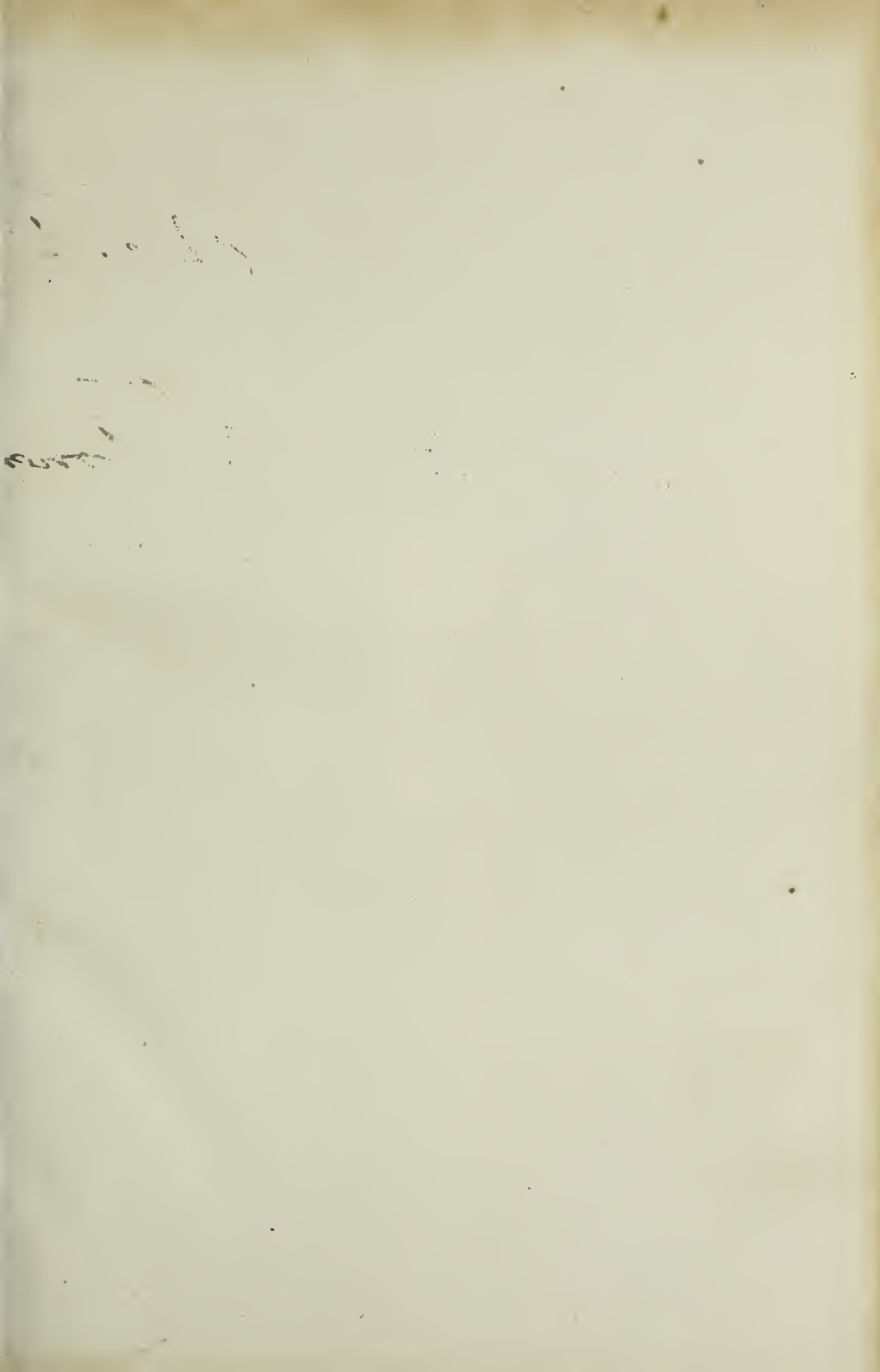
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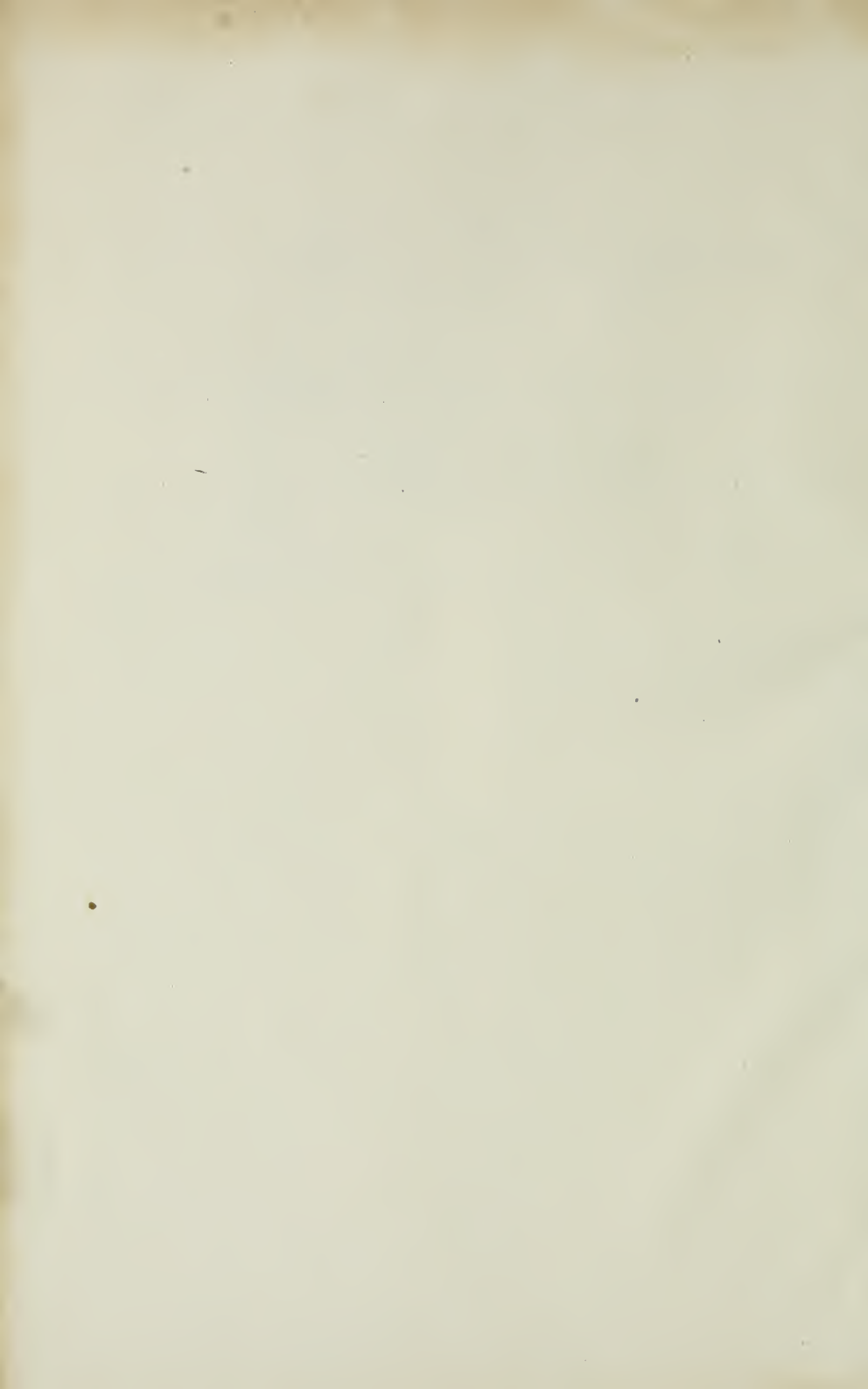
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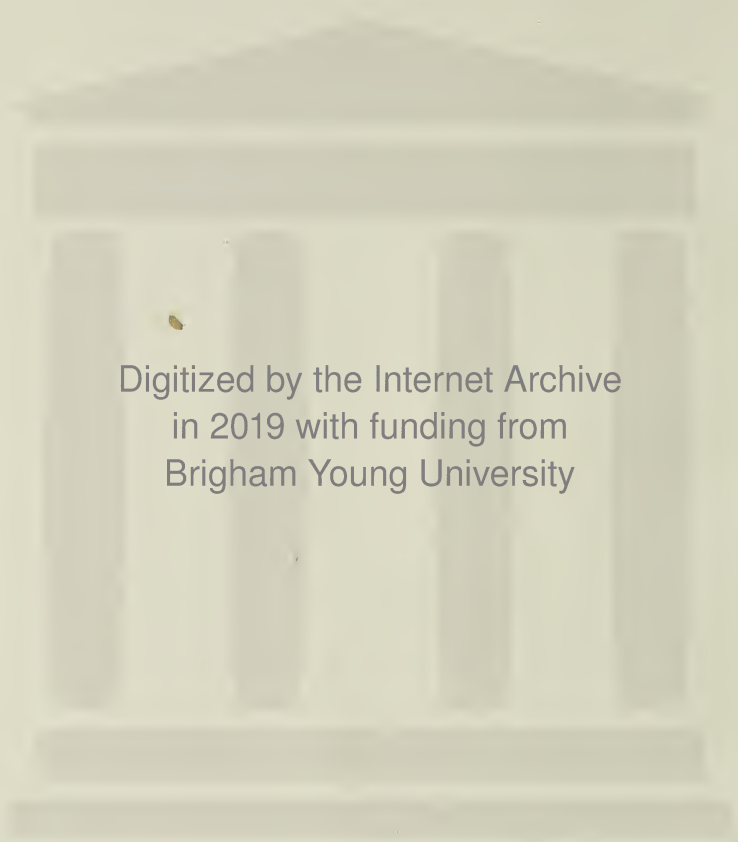
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L A W S
OF THE
TERRITORY OF UTAH,

PASSED AT THE
TWENTY-SIXTH SESSION OF THE LEGISLATIVE ASSEMBLY,

HELD AT
The City of Salt Lake, the Capital of said Territory,
Commencing January 14, A. D. 1884, and
Ending March 12, A. D. 1884.

PUBLISHED BY AUTHORITY.

SALT LAKE CITY:
THE TRIBUNE PRINTING AND PUBLISHING COMPANY.

1884.

CERTIFICATE OF AUTHENTICATION.

TERRITORY OF UTAH, }
SECRETARY'S OFFICE. } ss.

I, ARTHUR L. THOMAS, Secretary of the Territory of Utah, do hereby certify that the printed laws and joint resolutions contained in this volume are true, correct, and full copies of all the enrolled laws and joint resolutions that were passed at the Twenty-sixth regular session of the Legislative Assembly of said Territory, begun and held at the city of Salt Lake, the capital of said Territory, on the 14th day of January, A. D. 1884, and ending on the 12th day of March, A. D. 1884, with the exceptions of corrections in orthography and punctuation, and omissions inserted in brackets.

In Testimony Whereof, I have hereunto set my hand and affixed the great seal of said Territory. Done at the city [L. S.] of Salt Lake, the capital of said Territory of Utah, this 31st day of May, A. D. 1884.

ARTHUR L. THOMAS,
Secretary of Utah Territory.

FEDERAL OFFICERS OF THE TERRITORY.

GOVERNOR :

ELI H. MURRAY.

SECRETARY :

ARTHUR L. THOMAS.

JUDGES OF THE SUPREME COURT :

Chief Justice :

JOHN A. HUNTER, - - - - THIRD DISTRICT

Associate Justices:

PHILIP H. EMERSON, - - - - FIRST DISTRICT

STEPHEN P. TWISS, - - - - SECOND DISTRICT

UNITED STATES MARSHAL :

E. A. IRELAND.

UNITED STATES ATTORNEY :

WILLIAM H. DICKSON.

SURVEYOR GENERAL :

FREDERICK A. SALOMON.

RECEIVER OF PUBLIC MONEYS :

MOSES M. BANE.

REGISTER OF LAND OFFICE :

HUMPHREYS McMASTER.

UNITED STATES COLLECTOR :

O. J. HOLLISTER.

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LAWS
OF THE
TERRITORY OF UTAH

PASSED AT THE
TWENTY-SIXTH SESSION OF THE
LEGISLATIVE ASSEMBLY.

1884.

CHAPTER I.

OF TOY PISTOLS.

AN ACT to prevent the Selling or Giving of Toy Pistols.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That any one selling or giving a toy pistol to any person in this Territory, shall be guilty of a misdemeanor.

Approved Feb. 27, 1884.

CHAPTER II.

OF LAWS OF 1880.

AN ACT repealing Section 21, Chapter XXXI. of the Laws,
1880.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 21, Chapter XXXI

Cost of main-
taining Insane
patients, how
paid.

of the Laws of 1880, is hereby repealed and the following substituted in lieu thereof: Until otherwise provided for by law, the Board of Directors are hereby authorized and empowered to establish and fix the rate per week or month for the care and keeping of patients within the asylum, which rates shall not exceed the actual cost, and if such patients have not sufficient means to pay for their care and keeping, one-half of the deficiency shall be paid by the Territory and the other half by the county from which said patients come.

Approved Feb. 27, 1884.

CHAPTER III.

CHANGE OF NAME.

AN ACT to Change the name of John M. Nevenhurst to John M. Hurst.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the name of John M. Nevenhurst, of Summit County, is hereby changed to John M. Hurst, and that any and all legal rights and obligations existing in the name of John M. Nevenhurst are hereby continued to John M. Hurst.

Approved Feb. 29, 1884.

CHAPTER IV.

OF COMPILED LAWS.

AN ACT amending Section 2006, Chapter X., Title IX., of the Compiled Laws.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section two thousand and

six (2006), Chapter X., Title IX., of the Compiled Laws be and the same is hereby amended by striking out all of said Section after the word "is" in the seventh line and inserting in lieu thereof the words "guilty of a misdemeanor."

Approved Feb. 29, 1884.

CHAPTER V.

OF LAWS OF 1882.

AN ACT to amend Section 2 of Chapter XXVIII. of the Laws of Utah of 1882.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 2 of Chapter XXVIII. of the Laws of Utah of 1882 be and the same is hereby amended as follows: By striking out all after the word "business" in line fourteen of said Section up to and including the word "petition" in line fifteen and substituting in lieu thereof the following, to-wit: "Before granting to the applicant a license he shall execute"; also by inserting after the word "be" and before the word "in" in line twenty-five of said Section the following, to-wit: "fixed by the county court, or city council, as the case may be."

Amending liquor
law of 1882.

Approved Feb. 29, 1884.

CHAPTER VI.

OF FISH AND GAME.

AN ACT for the Protection of Fish and Game.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That every person

Penalty for killing quail, grouse, partridge, duck, etc., when.

who, between the fifteenth day of March and the fifteenth day of August, in each year, wilfully takes, kills, destroys, or offers for sale quail, partridges, or grouse; or who, between the fifteenth day of April and the fifteenth day of September, in each year, wilfully takes, kills, destroys, or offers for sale any kind of wild ducks; or who shall at any time rob the nest of the above-mentioned birds; or who shall kill any wild duck between one hour after sunset and one hour before sunrise; or who shall kill any quail or any imported game birds or their progeny for three years next ensuing the passage of this act, shall be guilty of a misdemeanor.

Penalty for killing, etc., elks, deer, etc., when.

SEC. 2. Every person who, between the first day of December, of each year, and the first day of the September following, takes, kills, or destroys any elk, deer, mountain sheep or antelope; or who shall at any time kill any of the above animals for their skins, is guilty of a misdemeanor; *Provided*, That persons camping in the mountains may during the months of July and August kill sufficient of the males of the above animals to furnish themselves food while so camping.

Penalty for buying, selling game, when.

SEC. 3. Every person who buys, sells, or has in his possession any of the game enumerated in the two preceding sections, taken or killed within the time during which the taking or killing thereof is prohibited, except such as are tamed or kept for show or curiosity; and every person who buys, sells, or offers for sale the skin of any animal, the killing of which is herein prohibited, is guilty of a misdemeanor.

Penalty for killing, etc., trout, when.

SEC. 4. Every person who at any time takes or kills any fish, except with hook and line, or with seine, as hereinafter provided, or who shall catch or kill any trout in any way between the fifteenth day of March and the fifteenth day of June, of each year, is guilty of a misdemeanor; *Provided*, That seines not more than two hundred yards long and twelve feet wide, with meshes not less than one and a half inches square for fifty yards in the centre, and meshes not less than two inches square in the wings or ends thereof, may be used in Green River, and Bear and Utah Lakes, only between the first day of October, of each year, and the first day of June following; *Provided further*, That nothing in this act shall be so construed as to prevent any person from taking fish from the public waters of the Territory for the purpose of stocking private fish ponds, or to prohibit any person from managing and controlling his private ponds or taking fish therefrom.

Proviso.

SEC. 5. Every person who at any time catches or kills any fish with set line or lines, is guilty of a misdemeanor.

Fishing with lines, misdemeanor

SEC. 6. Every person who puts into the waters of this Territory any poisonous or explosive substance, or anything that is injurious to fish, or that renders the water unfit for household purposes, is guilty of a misdemeanor.

Penalty for using explosives, etc., in water.

SEC. 7. Every person who at any time takes any fish from any private fish pond or stream without the consent of the owner, is guilty of a misdemeanor.

SEC. 8. Every person, corporation or association who shall construct or continue to keep any dam across any of the streams of this Territory, in which fish migrate, in such a manner as to hinder or obstruct the migration of fish to or from their spawning grounds, without providing a fishway and keeping it in repair as provided in the following section, is guilty of a misdemeanor.

Penalty for failing to provide fishways, when.

SEC. 9. The fishway for the passage of fish in large streams of water, mentioned in the preceding section, must be made in the form of a box, open at each end, not less than four feet wide, and three feet high, and of plank not less than two inches thick; and it must be fastened in the water at the top of the dam and the lower end must extend to and be fastened in the pool below the dam at any angle not exceeding thirty-five degrees. Inside this box, fastened at the bottom and one end to the side of the box, there must be pieces of plank four feet apart, placed transversely so as to cause a riffle not less than ten inches high. These pieces of plank must be thirty inches long, and so fastened as to be at right angles with the sides of the box, alternately fastened, one at one side, the other at the other side of the box. Whenever the stream is small the county court of the county in which the dam is, or is to be constructed, may permit the box to be of less dimensions.

Fishway, how to be constructed.

SEC. 10. That any person, corporation or association, who has taken or may hereafter take out the waters of any stream or lake in this Territory that contains fish, shall be required to place across the head of such canal or ditch a grating of horizontal bars not more than one inch apart, sufficiently secured on the sides, to prevent fish from escaping into said canal or ditch. Failing to comply with the provisions of this section is a misdemeanor.

Penalty for taking water from streams without providing grating, etc.

SEC. 11. The provisions of this act apply to Indians who kill deer for their skins.

Indians not exempted.

SEC. 12. All former laws for the protection of fish and game are hereby repealed.

Approved March 1, 1884.

CHAPTER VII.

INCORPORATING PARK CITY.

AN ACT incorporating Park City, in Summit County, Utah Territory.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That so much of the County of Summit in the Territory of Utah, included in sections nine (9), ten (10), fifteen (15), sixteen (16) and the north half ($\frac{1}{2}$) of sections twenty-one (21) and twenty-two (22), in Township two (2) south of Range four (4) east of the Salt Lake Meridian, shall be, and the same is, hereby organized and incorporated into a city by the name of Park City.

SEC. 2. The inhabitants of said city are hereby constituted a body politic and corporate under the name and style aforesaid, and by that name it shall be known in law, and shall be capable of suing and being sued in all courts of law or equity; it may have and use a common seal, and alter it at pleasure; and shall be capable of leasing, purchasing, holding and disposing of, real and personal property, for the use of the corporation, and to improve and protect said property; and to do all things necessary or proper to be done in relation thereto, as natural persons.

SEC. 3. The said city shall be divided into three wards, as follows, using the amended Plat of Park City as a guide, said Plat being of record in the recorder's office of said County of Summit, namely: All that portion of said city lying northerly of a line, commencing at a point on the west boundary line of said Section sixteen due west of the westerly terminus of Second Street, thence east to the center of the westerly terminus of Second Street, thence easterly along the center of Second Street to the center of Main Street, thence northerly along the center of Main Street to the center of Heber Avenue, thence easterly along the center of Heber Avenue to the east boundary line of Section sixteen, thence east to the east boundary of said city, shall be known as, and called the First Ward. All that portion of said city lying south of the First Ward,

and northerly of a line commencing at a point on the west boundary line of said Section sixteen, three hundred and fifty feet north of the southwest corner of said section and running thence easterly to the center of the westerly terminus of Sixth Street, thence easterly along the center of said street to the east boundary line of said Section sixteen, thence due east to the east boundary of said city, shall be known as, and called the Second Ward. All that portion of said city lying south of the Second Ward of said city shall be known as, and called the Third Ward. And each ward shall be a voting precinct.

SEC. 4. The municipal government of said city shall be vested in a common council, to be composed of a mayor and six aldermen, a majority of whom shall constitute a quorum for the transaction of business.

SEC. 5. An election shall be held on the first Monday in May, 1884, and annually thereafter. At the first election there shall be elected a mayor who shall be an elector and freeholder within said city, and who shall hold his office for one year, and until his successor is elected and qualified. Also two aldermen from each ward who shall be electors and freeholders in the ward from which they are elected. Also one justice of the peace, who shall be known as police justice, who shall possess the qualifications of an elector in said city, whose term of office shall be one year, and until his successor shall be elected and shall have duly qualified. One of said aldermen, from each ward, shall hold his office for two years and until his successor shall be elected and qualified, and one of said aldermen, from each ward, shall hold office for one year and until his successor shall be elected and qualified. And at each annual election thereafter there shall be elected one alderman, from each ward, whose term of office shall be two years, and until his successor shall be elected and shall have duly qualified. There shall also be elected at said election and annually thereafter, one treasurer who shall also be an elector and freeholder in said city, and whose term of office shall be one year and until his successor shall have been duly elected and qualified.

SEC. 6. The first and all subsequent elections shall be held and conducted in each ward in the same manner as now provided by law for precinct elections; and every legally qualified voter residing within the limits of said city shall be entitled to vote at the polls within the ward where he resides.

SEC. 7. The common council shall hold stated meetings, at such times as they may by ordinance provide.

SEC. 8. The mayor shall preside at all meetings of the common council, when present, and shall have a casting vote. The common council at its first meeting after the newly elected aldermen or a majority of them shall have qualified, shall elect from its members a president, who shall possess the same powers, and perform the same duties as the mayor during the absence or inability of the mayor or during a vacancy in that office.

SEC. 9. The mayor shall be the chief executive officer of said city. He shall sign and approve all ordinances or by-laws passed by a majority of the council. It shall be his duty to see that all officers of said city shall faithfully perform and discharge their official duties; to see that all laws pertaining to the municipal government of said city, and all ordinances and resolutions of the common council be faithfully observed and executed; and he shall in his discretion report to the common council any violations thereof; he shall, from time to time, give to the council such information and recommend such measures as he shall deem necessary and expedient.

SEC. 10. The common council shall appoint a recorder, an assessor and a marshal, and may appoint a city attorney, a street commissioner, and such other officers whose election is not herein specially provided for, as they may deem necessary to carry into effect the powers granted by this act, prescribe the duties and qualifications of such officers, and remove the same at pleasure. And in case of the absence, inability, or other disqualification of the police justice of said city, the mayor is hereby authorized and empowered to designate and appoint one of the justices of the peace of the precinct of which said city is a part, to act as police justice during such absence, inability or other disqualification of said police justice. And in case of vacancy in any office made elective by this act, the common council shall fill such vacancy by appointment, until the next annual election, and until the person elected to fill such vacancy shall have duly qualified.

SEC. 11. The common council shall have power to annually assess, levy and collect taxes on all real and personal property in said city, taxable by the laws of this Territory, which taxes, when so levied, shall be and remain a lien upon the property so assessed until the same shall be paid; *Provided*, The said council shall not levy a tax for city purposes, in any one year, to exceed one cent on the dollar of the assessed valuation.

SEC. 12. The common council shall have power, by ordinance and enforcement thereof, to prescribe and regulate the form of assessment rolls, and the duties and powers of assessors, not inconsistent with the laws of this Territory.

SEC. 13. The common council shall, on or before the first Monday in June, of each year, determine the amount of money necessary to be raised by tax for the current year, and shall at once notify the assessor of said amount.

SEC. 14. The assessor shall, immediately on receipt of the notice prescribed in Section 13, proceed to make said assessment; and shall return the assessment rolls on or before the first Monday in July of each year, but the time may be extended, by order of the council, not exceeding thirty days. On return thereof the common council shall fix a day, of which at least ten days' public notice shall be given, for hearing objections thereto, and any person feeling aggrieved by the assessment of his property, may appear at the time specified and make his objections, which shall be heard and determined by the common council; and the council shall have power to alter, add to, take from, and otherwise correct and revise said assessment roll; *Provided*, That if the common council shall find it necessary to add to the assessed valuation of any property on the assessment roll, or list other property liable to taxation, not upon said roll; it shall direct the recorder to send to the person interested a written notice naming therein the time and place when it will act on said case, and allowing a reasonable time for such party to appear.

SEC. 15. The treasurer shall be furnished, within ten days after the assessment roll is corrected, with a list of the taxes to be collected; and if said taxes are not paid on or before the first day of October next after they are assessed, the treasurer shall have power, and it is hereby made his duty, to collect said taxes with interest and costs, by suit in the corporate name, or by distress, seizure and sale of any property belonging to any person so indebted.

SEC. 16. The assessor's roll shall in all cases be evidence on the part of the corporation.

SEC. 17. The common council shall have authority to make all by-laws and ordinances relative to the powers, duties and compensation of the officers of said corporation, subject to the restrictions as to compensation mentioned in this act. To make all such general regulations for the prevention and extinguishment of fires, fixing of chimneys, flues and stove-pipes, as they may deem proper; to procure

fire engines, and other apparatus; to organize fire, hose, and hook and ladder companies, appoint foremen therefor and prescribe their duties and make rules and regulations for their government. And shall have power to prohibit and prevent the construction of any wooden or frame houses, store, shop, or other building on such streets, alleys and places, and within such limits in said city as they may from time to time prescribe; to prohibit and prevent the removing of wooden or frame buildings from any part of said city to any lot on such street, alley and places within said limits.

SEC. 18. To exclusively control, regulate, repair and clear streets, alleys, bridges, sidewalks and crosswalks, and open, widen, straighten, or vacate streets and alleys, and put drains and ditches therein; and prevent the encumbering or obstructing of the streets, lanes, alleys, sidewalks or public grounds with lumber, timber, posts, awnings, signs, or any other thing, material or substance whatever.

SEC. 19. To cause the expense of grading or paving of streets and sidewalks, of making drains and sewers, and all other local improvements to be assessed against the owners of the premises the value of which is increased by such improvement and in proportion to which such premises are improved thereby, or cause the expense thereof to be paid out of the city treasury, as they may deem just and proper.

SEC. 20. The council shall have exclusive authority to establish and regulate the police of the city, and to make all such by-laws and ordinances for the preservation of the public peace; for the suppression of routs and riots; for the apprehension and punishment of vagrants, drunkards, and disorderly persons; and to suppress disorderly houses and houses of ill-fame and to punish the keepers and inmates thereof; to prohibit every species of gaming, and to punish all persons indulging in any species of gaming or gambling; to define and declare what are nuisances and provide for the prevention and abatement of the same; to regulate the keeping or storing of gun or blasting powder or other high explosives; to prohibit the violation of Sunday; the discharge of any species of firearms; and the disturbance of any religious congregation or any other public meeting assembled for any lawful purpose; to provide against and punish fast or immoderate riding or driving; to license, tax and regulate the manufacturing, selling, or giving away of any vinous, spirituous or fermented liquors; to license, tax and regulate billiard and pool tables, nine or ten pin alleys; to regulate and license all exhibitions of

common showmen, shows of every kind, concerts, circuses, theatrical performances, and all other exhibitions and amusements; to license and regulate peddlers, auctioneers and traveling salesmen; to restrain, regulate or prohibit the running at large of cattle, horses, mules, swine, sheep, goats, and poultry, and to authorize the distraining or impounding and sale of the same, and to regulate and control the distribution of the proceeds of such sale; to tax, prevent or regulate the keeping of dogs and to authorize the destruction of the same when at large contrary to ordinance; to license, tax and regulate merchants, butchers, traders and dealers in merchandise and property of every description; to license and regulate banks, hotels, restaurants, livery stables, barber shops, bath houses and laundries. To make all needful rules to prevent the spreading of all contagious or infectious diseases; and all needful rules to regulate the health and cleanliness of said city. To establish and maintain a system of water works for fire, domestic, and other purposes, together with necessary reservoirs, pipes and hydrants. To erect street lamps and regulate the lighting thereof. To regulate all public graveyards and the burial of the dead in said city. And to make all other by-laws, ordinances, and regulations, for the purpose of carrying into effect the powers conferred by this act, which they deem necessary for the safety and good government of said city, and to preserve the health and protect the property of the inhabitants thereof, and to repeal, alter or amend the same at pleasure. And to this end the common council may impose fines and penalties for any violation of the by-laws or ordinances which may be made by them as aforesaid and may provide that any offender refusing to pay such fine or penalty be compelled to labor on the streets or public works of said city; *Provided*, That no by-law or ordinance shall impose a fine exceeding two hundred dollars, nor subject the offender to imprisonment in the city jail exceeding ninety days, or both; *And provided further*, That no by-law or ordinance imposing a penalty or punishment shall be of any effect until the same shall have been published for two weeks successively in a newspaper published in said city or by posting up certified copies of said by-laws or ordinances in two public places, in each ward of said city.

SEC. 21. All ordinances or by-laws of the city may be proven by the seal of the corporation; and when published in book or pamphlet form purporting to be printed or published by the authority of the city, the same shall be

received in evidence in all courts or places without further proof.

SEC. 22. The salary of the mayor and aldermen of said city shall not exceed the sum of one dollar each per annum.

SEC. 23. The recorder shall be the clerk of the common council and keep the corporate seal and the books and papers of the corporation entrusted to him by the council; he shall attend all meetings of the council and record all their proceedings. He shall attest all ordinances or by-laws of the corporation and affix the seal of the corporation thereto. He shall sign all warrants drawn on the treasurer; he shall also perform other duties which may be required of him by ordinance of said city or the order of said council.

SEC. 24. The police justice of said city shall have exclusive original jurisdiction of all cases arising under or by reason of the violation of any ordinance or by-law of said city, and shall have the same jurisdiction within the limits of the city as other justices of the peace in cases arising under the laws of the Territory. The practice in said police justice's court shall be the same, and governed by the same rules, as provided by law for justices' courts. From all final judgments of said police justice's court, whether civil or for violation of any ordinance of said city, an appeal shall be allowed by either party, against whom the judgment is rendered, to the district or other appellate court provided by law, in the same manner and upon the same terms as provided by law for appeals from justices' courts in similar cases.

SEC. 25. All process issued by said police justice's court in all cases arising under the ordinances of said city shall be directed to the marshal or any of his deputies.

SEC. 26. The police justice shall account for and pay over all moneys coming into his hands belonging to said city, whether from fines, penalties, forfeitures, recoveries on execution or otherwise, into the city treasury as often as the council may direct.

SEC. 27. He shall keep a docket in which shall be entered all cases commenced before him, and all his proceedings thereunder in such manner as may be required by the council, which docket at the expiration of his term of office, with all papers in his possession pertaining to said office, he shall turn over to his successor.

SEC. 28. The treasurer shall by virtue of his office be collector of taxes, and shall receive and safely keep, and pursuant to the warrant of the recorder, disburse all the moneys of the corporation. He shall keep proper books

of account which shall be open to inspection by any elector of the city at all reasonable hours. He shall furnish to the common council as often as required a full, fair and correct account of all receipts and disbursements and also the state of the treasury. He shall perform such other duties as shall be required of him by ordinances or by-laws of said city or by order of the common council.

SEC. 29. The marshal shall be chief of police; it shall be his duty to serve all process that may lawfully be directed and delivered to him for service; to see that all by-laws and ordinances of the common council are promptly and effectually enforced; he shall obey all lawful commands of the mayor, and may command the aid and assistance of all other citizens of said city in the discharge of his duties; he may appoint such number of deputies as the common council may direct and approve, who shall perform the same duties as the marshal, and for whose official acts he shall be responsible.

SEC. 30. The marshal and deputies shall have power to serve and execute all process in behalf of the city as sheriffs and constables have by law to execute similar processes.

SEC. 31. The mayor and aldermen before entering upon the duties of their respective offices shall take and subscribe an oath that they will support the Constitution of the United States, and the laws of this Territory, and that they will faithfully perform the duties of the office to which they have been elected, to the best of their skill and abilities, which oath shall be filed with the Secretary of the Territory, and they shall be commissioned by the Governor.

SEC. 32. The treasurer, recorder, assessor, police justice and marshal of said city, before entering upon the duties of their respective offices shall enter into an undertaking with said city and whomsoever it may concern, in such sum, not less than five hundred dollars, as the common council may require, conditioned for the faithful performance of the duties of their respective offices; they shall also take and subscribe an oath to support the Constitution of the United States and the laws of this Territory, and that they will faithfully perform the duties of their respective offices to the best of their skill and abilities; said undertakings shall be approved by the common council and together with said oath of office filed in the office of the recorder of said city; *Provided*, That the undertaking and oath of the recorder be filed with the mayor. The police justice shall be commissioned by the Governor upon pre-

sentation of the certificate of his election or appointment, and his qualification as hereinbefore required.

SEC. 33. All claims against the city shall be audited by the council and, when allowed, paid by a warrant on the treasurer signed by the recorder and countersigned by the mayor.

SEC. 34. Nothing in this act shall be so construed as to impair the jurisdiction of the justices of the peace and constables in the precincts of which said city is a part, in such matters as may come under their jurisdiction under the laws of this Territory. Nor to deprive the citizens of said city, properly qualified to vote, from voting at all precinct elections.

SEC. 35. The police justice and marshal of said city shall receive, and they are hereby authorized to tax, the same fees which are allowed by law to justices of the peace and constables in similar cases, which fees when collected shall be paid into the city treasury; and said police justice and said marshal and his deputies shall receive no other compensation, for services rendered for, or in behalf of, said city, than the salary fixed and allowed them by the common council.

SEC. 36. If any alderman shall during his term of office remove from the ward from which he shall have been elected, his office shall at once become vacant.

SEC. 37. That an act entitled "An Act Incorporating Park City," approved March 9, 1882, be and the same is hereby repealed.

SEC. 38. This act shall be in force from and after the fifteenth day of March, A. D. 1884.

Approved March 1, 1884.

CHAPTER VIII.

OF LAWS OF 1882.

AN ACT amending Section 5 of Chapter 28, Laws of 1882.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 5, Chapter

XXVIII., of the Session Laws of 1882, is hereby amended by inserting after the word "age," in line five, the following: "or who shall permit any of said persons to be and remain in his place of business where liquors are sold."

Amending liquor
law of 1882.

Approved March 1, 1884.

CHAPTER IX.

OF EPHRAIM CITY.

AN ACT to amend "an Act Incorporating the City of Ephraim in Sanpete County," approved February 14, 1868.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 1 of an act entitled "An Act Incorporating the City of Ephraim in Sanpete County," approved February 14, 1868, be and the same is hereby amended by striking out all after the word "wit" in the third line and before the word "shall" in the ninth line of said section, and inserting in lieu thereof the following: commencing at the center of Section (10) in Township (17) South Range (3) East Salt Lake Meridian, thence one and a half miles west, thence one and a half miles north, thence one and a half miles east, thence one and a half miles south to the place of beginning.

SEC. 2. This act to be in force from and after its passage.

Approved March 1, 1884.

CHAPTER X.

OF INCORPORATED CITIES.

AN ACT to extend the Powers of Incorporated Cities.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the city councils of each

Granting additional powers to incorporated cities.

and every of the incorporated cities of this Territory, are hereby authorized and empowered by ordinance and enforcement thereof to enforce the payment of all city taxes by levy and sale of the real or personal property of any delinquent taxpayer, in the manner provided by law for assessing and collecting territorial and county taxes. The city assessors and collectors to exercise the same powers within their several jurisdictions as are exercised by county assessors and collectors, and any city taxes, when assessed, shall be a lien on the property assessed until paid.

Approved March 1, 1884.

CHAPTER XI.

OF LAWS OF 1882.

AN ACT amending Section 1, Chapter XIII. Laws of Utah, 1882.

City lots, etc., to be fenced, when.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 1 of Chapter XIII. (13) Laws of 1882 is hereby amended by striking out all of lines three, four, five, and up to and including the word "repair" in line six of said section, and inserting in lieu thereof, the following: "that owners of such lots in a town or village not incorporated, as may be designated 'town lots,' by the county court of the county in which such town or village may be situated, and owners of such lots within an incorporated city or town, as may be designated 'city or town lots' by the city council of such incorporated city or town, and owners of orchards, stack yards and gathered crops are hereby required to enclose them with a lawful fence and keep the same in repair."

Approved March 4, 1884.

CHAPTER XII.

OF KAYSVILLE CITY.

AN ACT amending an Act Incorporating Kaysville City in Davis County, approved February 13, 1868.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That an act entitled "An Act Incorporating Kaysville City in Davis County," approved February 13, 1868, is hereby amended by striking out all of Section 15 of said act, and substituting therefor the following: "The city council shall have power to restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and to authorize the distraining, impounding or sale of the same, for the penalty and costs incurred thereby, and to impose penalties for any violation of city ordinance in relation thereto; and to tax, regulate or prevent the keeping of dogs, and to authorize the destruction of the same, when at large contrary to city ordinance; *Provided*, That the proceeds of such sale shall be paid into the county treasury of the county, less the amount of cost and expenses incurred in distraining, impounding and selling the same, to be used as provided for in Section 408 of the Compiled Laws of Utah; and that such costs and expenses shall not exceed those provided for in Section 413, Compiled Laws of Utah, for similar services.

Approved March 4, 1884.

CHAPTER XIII.

OF RICHMOND CITY.

AN ACT amending "An Act Incorporating Richmond City in Cache County," approved February 6, 1868.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That an act in-

incorporating Richmond City in Cache County be and the same is hereby amended by adding thereto the following, to-wit: the city council of Richmond City shall have power to license, tax and regulate hackmen, draymen, carters, porters, omnibus drivers, cabmen, packers, car men, and livery stables or the proprietors thereof, tavern, hotel and restaurant keepers, bakers, and confectioners.

SEC. 2. To regulate and control the locations of gas works, canals, telegraph and telephone poles and other similar improvements.

SEC. 3. To prevent horse racing or fast riding or driving in the streets of said city; to prohibit the abuse or cruel treatment of animals, and to punish any person or persons for abusing or cruelly treating animals; to compel persons to put up hitching posts in front of their places of business; to compel the fastening of horses, mules or other animals while standing in the streets of said city.

SEC. 4. To exclusively control, regulate, repair and clear the streets, alleys, bridges, side walks, or cross walks, and to open, widen, straighten or vacate streets and alleys, and put drains, sewers and ditches therein, and to prevent the injuring and incumbering of the streets or side walks of said city in any manner whatever.

SEC. 5. To regulate and license butchers, and to revoke their license for malconduct in the course of trade, and to regulate, license and restrain the sale of fresh meat and vegetables.

SEC. 6. The city council shall cause to be published, by posting up in three public places in said city on or before the first day of December of each year, a statement of the finances of said city for the previous fiscal year, showing the receipts and disbursements in detail of the funds of said city.

SEC. 7. The city council of said city shall have the exclusive management and control of all finances and property of said city; and shall have power to lay out, improve and regulate the public grounds of said city, to direct and regulate the planting and preserving of trees in the streets and public grounds of said city, and to regulate the fencing of lots within the bounds of said city.

Approved March 4, 1884.

CHAPTER XIV.

OF LAWS OF UTAH.

AN ACT amending Section 213 of the Compiled Laws of Utah.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 213 of the Compiled Laws of Utah be and the same is hereby repealed and the following substituted in lieu thereof, to-wit: the county treasurer must receive and safely keep all funds belonging to the county, and pay out the same only on warrants issued by the clerk of the county court; he must keep an accurate account of all moneys or other funds received or disbursed by him; he must issue duplicate receipts, keeping a memorandum stub, for all money or other funds received by him, and deliver to the person paying the same the duplicate and present to the clerk of the county court the original receipt. He must pay all county warrants presented for payment, in the order of presentation, if he have sufficient funds for that purpose, and must keep a canceling stamp and imprint the same on every warrant paid by him; at the close of each fiscal year he must make and present to the county court a statement showing the balance in the treasury at the close of the previous fiscal year, the amount received from each source of revenue, the amount disbursed, and the balance, if any, in the treasury; he must present with each annual statement, as vouchers for disbursements, all warrants paid by him during the fiscal year; *Provided*, That with the statement made May 31, 1884, he must present all warrants then cancelled and deposited in his office. If required by the court he must make a statement at any time showing the condition of the treasury, and his office shall be kept at the county seat.

Duties of County Treasurer in regard to public funds, and payment of same.

Proviso.

Approved March 4, 1884.

CHAPTER XV.

OF STOCK.

AN ACT providing for Recording the Pedigree of Stock.

SECTION. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Territorial recorder of marks and brands is hereby made the Territorial recorder of the pedigree of stock. It shall be his duty to keep suitable records, properly indexed for reference, for recording the pedigree of each of the following kinds of animals, in separate books: one book for horses, one for horned stock, and one for sheep. It shall be his duty to number each kind separately and record in the order in which they are filed, the pedigrees of all animals presented for record, as prescribed in this act, and shall endorse thereon the date and page of record, and shall furnish, when required, certified copies of the pedigree of any animal found of record in his office. He is hereby authorized to administer the oaths provided for in this act, and it shall be his duty to keep a seal which he shall attach to all official documents given under his hand as such officer. Said records shall be open to the inspection of interested persons at any time during business hours.

SEC. 2. A pedigree, to be entitled to record, must set forth the name and description of the animal, its pedigree, so far as known, and the name and residence of the owner. Where there is a doubt as to the ancestors of an animal, the owner must state it by prefixing the statement relating to that part of the pedigree with the words: "said to be," or "believed to be." Each pedigree must be subscribed and sworn to as being correct by the person owning the animal described, which oath may be administered by the said recorder or any officer authorized to administer oaths.

SEC. 3. The recorder may charge for recording a pedigree of not exceeding one hundred words, one dollar; for each additional one hundred words or fraction thereof, fifty cents, and in the same proportion for certified copies of pedigree.

SEC. 4. Any person who shall knowingly subscribe to, or present either for record, or to any purchaser of stock

Recorder of
marks and
brands to record
pedigree of
stock.

His duties.

When pedigree
may be re-
corded, and
how.

Fees of recorder.

Penalty for false
statements.

a written or printed pedigree, containing statements either wholly or in part false, is guilty of a misdemeanor.

SEC. 5. The records and papers pertaining to said office shall be provided from the funds of the Territory and shall be Territorial property.

Record to be
Territorial prop-
erty.

Approved March 5, 1884.

CHAPTER XVI.

OF PARTNERSHIP.

AN ACT authorizing Limited Partnership.

SECTION. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That limited partnerships for the transaction of any mining, mercantile, mechanical or manufacturing business within this Territory, may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or effecting insurance.

Limited partner-
ships may be
formed.

Conditions of
same.

SEC. 2. Such partnerships may consist of one or more persons who shall be called general partners, and shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments, or in real or personal property, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the co-partnership beyond the fund so contributed by him or them to the capital stock.

May consist of
general and
special partners.

SEC. 3. The general partners only shall be authorized to transact business and sign for the co-partnership and to bind the same.

Who may trans-
act business.

SEC. 4. The persons desiring to engage in the formation of such partnerships, shall make and severally sign a certificate, which shall contain: 1. The name of the firm under which such partnership is to be conducted. 2. The general nature of the business intended to be transacted.

Certificate to be
signed; what it
must contain.

3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital in money or in real and personal property which each special partner shall have contributed to the common stock. 5. The period at which the partnership is to commence and the period at which it shall terminate.

Certificate; how
acknowledged.

SEC. 5. The certificate shall be acknowledged by the several persons signing the same before a notary public or other officer authorized by law to take acknowledgment or proof of the execution of conveyances of land, and such acknowledgment and proof shall be made and certified in the same manner as the acknowledgment or proof of conveyances of land may be made or certified.

Certificate must
be recorded.

SEC. 6. The certificate so acknowledged and certified shall be filed in the office of the county recorder of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by such county recorder in a book kept for that purpose, and in case any such partnership shall have a place of business in more than one county in the Territory, then a copy of such certificate, so acknowledged and certified by the county recorder of the county where the original was filed, shall in like manner be filed and recorded in each county in which such partnership shall have a place of business, in the office of the county recorder of said county.

Affidavit must be
filed with certificate.

SEC. 7. At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate, or value thereof in real and personal property, have been contributed by each of the special partners to the common stock, and actually and in good faith paid into the general fund.

Partnership not
formed until certificate is
recorded and affidavit
filed.

SEC. 8. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit has been filed as before directed, and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

Terms of partnership must be
published; when
and how.

SEC. 9. The partners shall immediately publish the terms of the partnership, when recorded as above provided, for at least four consecutive weeks in a newspaper to be designated by the county recorder of the county in which

the record shall be made, and if no newspaper is published in the county, then the same shall be published in a newspaper published within the judicial district in which their business shall be conducted, and if such publication be not made the partnership shall be deemed general.

SEC. 10. Affidavits of the publication of such notice by the printer, publisher, or foreman of the newspaper in which the same shall be published, shall be filed with the county recorder directing the same and shall be evidence of the facts therein contained.

Affidavits of printer, etc., to be evidence of publication.

SEC. 11. Every renewal or continuance of such partnership beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

Renewal of.

SEC. 12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership, unless renewed as special partnership according to the provisions of this act.

Alteration and changes; dissolution of.

SEC. 13. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, and if the name of any special partner shall be so used in such firm, he shall be deemed and held liable as a general partner.

How conducted.

SEC. 14. Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

Actions.

SEC. 15. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him from the firm, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of such partnership, but any partner may annually receive such rate of interest on the sum so contributed by him, as may be agreed upon in the articles of co-partnership not exceeding twelve per centum per annum, if the payment of such interest shall not reduce the original amount of such capital, and after the payment

Capital stock contributed.

of such interest, if any profits shall remain to be divided, he may also receive his portion of such profits.

SEC. 16. If it shall appear by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital with interest.

Special partners
not to transact
business

SEC. 17. A special partner may from time to time examine into the condition and progress of the partnership concerns, and may advise as to their management, but shall not engage in or transact any ordinary business of the partnership. If he shall interfere contrary to this provision, he shall be deemed in law a general partner, and accountable as such.

General and
special partners
to a count.

SEC. 18. The general partners shall be liable to account to each other, and to the special partners, for their management of the business, as other partners are now liable by law.

Liability of
special partners.

SEC. 19. Every special partner who shall violate any provision of Section 17, or who shall concur in or assist to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Special partners
not to claim as
creditors.

SEC. 20. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the creditors of the partnership shall be satisfied.

Dissolution of,
when.

SEC. 21. No dissolution, unless by the consent of creditors of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the recorder of the county in which the original certificate was recorded, and published once in each week, for four consecutive weeks in a newspaper printed in each of the counties, or if none are printed in the county, then in the judicial district where the partnership may have places of business.

SEC. 22. This act shall take effect on the first day of August, 1884.

Approved March 12, 1884.

CHAPTER XVII.

OF PAYMENT OF JURORS.

AN ACT providing for the Payment of Jurors.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That hereafter and until the first day of April, A. D. 1886, jurors summoned to attend the district courts of this Territory shall be paid the sum of two dollars per day for each day's actual attendance, and twelve cents per mile one way for the distance necessarily traveled from the place of summons to the place of holding court.

Pay of jurors.

SEC. 2. The clerk of the district court shall whenever a juror is discharged, issue to him a certificate under the seal of the court stating the name of the juror, and when and where he was summoned, the number of miles necessarily traveled from the place where service of the summons was made to the place of holding court, and the number of days said juror was in actual attendance.

Certificate to be issued, when.

SEC. 3. Upon presentation of said certificate to the auditor of public accounts he shall forthwith audit the same by comparing it with the statement of the clerk, provided for in Section 5 of this act, and if found correct and an appropriation has been made for that purpose and is not exhausted, the auditor shall issue his warrant for the proper amount; such warrant shall be redeemed whenever presented for payment at the Territorial treasury out of any money appropriated for that purpose.

Auditor must issue warrant for payment

SEC. 4. The plaintiff in each civil action and the appellant in each civil case appealed to the district court, shall respectively before his complaint is filed or his appeal is docketed deposit with the clerk of said court the sum of three dollars, which shall be known and designated as the jury fund.

Jury fund provided for.

SEC. 5. The said clerk shall within ten days after the close of each term of the district court, furnish the Territorial auditor of public accounts a statement, showing the name of each juror in attendance during the said term of court, when and where he was summoned, the number

Clerk to furnish statement of jurors' services.

of miles necessarily traveled from the place where service of the summons was made to the place of holding court, and the number of days said juror was in actual attendance.

SEC. 6. The said clerk shall, on or before the first Monday of June, 1884, and quarterly thereafter pay into the Territorial treasury all sums of money deposited with him under the provisions of this act, less his fees as herein-after provided, and shall at the same time furnish the Territorial auditor of public accounts a statement showing the number of cases filed, and appeals docketed since making his last statement, and the title of each case; *Provided*, That his first statement shall show the cases filed and appeals docketed after the approval of this act.

SEC. 7. The clerk shall receive for his services hire ten per cent. of all sums deposited with him under the provisions of this act, which amount shall be in lieu of all fees for the same service.

SEC. 8. Jurors' certificates for services rendered since January 1, 1884, and prior to the approval of this act, shall be redeemed as provided in Section 2, Chapter XLIX., of the Session Laws of 1882.

Approved March 12, 1884.

CHAPTER XVIII.

OF PUBLIC HOUSES.

AN ACT amending "An Act for the Protection of Keepers of Inns, Hotels and Boarding Houses, approved February 15, 1876."

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That an act entitled "An Act for the protection of the Keepers of Inns, Hotels, and Boarding Houses," approved February 15, 1876, be and is hereby amended by adding thereto the following section:

SEC. 4. Whenever a special agreement shall have been made between the owner of a storage warehouse and parties storing any description of property therein regarding the price for such storage, said property shall be sub-

Clerks shall pay
into treasury
moneys, when.

Salary, clerk.

Jurors'
Certificates.

Storage charges,
when and how
collected.

ject to the lien of such storage warehouse owner for charges for freight, storage, insurance, etc., and such storage warehouse owner shall have the right to detain such property until charges are paid, and in case of non-payment of such charges for the period of six months, such storage warehouse owner shall have the right to sell said property so stored, or such part thereof as may be necessary to pay charges. All such sales to be in accordance with the terms and conditions as provided for in Section 3 of this Chapter.

Approved March 12, 1884.

CHAPTER XIX.

OF RICHMOND CITY.

AN ACT amending "An Act incorporating Richmond City in Cache County," approved February 6, 1868.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 1 of an act entitled "An Act incorporating Richmond City in Cache County," approved February 6, 1868, be amended so as to read as follows:

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all that district of country embraced in the following boundaries in Cache County, to-wit: commencing at the center of Section thirteen (13) Township (14) North, range one East, and running thence due west to Cub River, thence down the main channel of said river to the center line of Section six (6) in Township thirteen (13) North Range one East, thence east on said line to the center of Section one (1), thence due north to the place of beginning, shall be known and designated under the name of Richmond City; and the inhabitants thereof are hereby constituted a body corporate and politic, by the name aforesaid, and shall have perpetual succession, and may have and use a common seal, which they may changed and alter at pleasure.

Defining
boundaries of.

Approved March 12, 1884.

CHAPTER XX.

OF DISEASED ANIMALS.

AN ACT to prevent the importation, selling or running at large of any domestic animal, affected with any infectious or contagious disease.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That it shall not be lawful for the owner of any domestic animal, or any person having the same in charge, knowingly to import or drive into this Territory any animal having any contagious or infectious disease; and any person so offending shall be guilty of a misdemeanor.

Penalty for permitting diseased animals to run at large.

SEC. 2. Any person being the owner of any domestic animal or having the same in charge who shall turn out or suffer any such domestic animal having any contagious or infectious disease, knowing the same to be so diseased, to run at large upon any uninclosed land, common or highway, or shall sell or dispose of any domestic animal, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be guilty of a misdemeanor.

Additional penalty for permitting.

SEC. 3. Any person violating any of the provisions of this act, in addition to the penalties herein provided, shall be liable for all damages that may accrue to the party damaged by reason of said diseased animal imparting disease.

Approved March. 12, 1884.

CHAPTER XXI.

OF MORTGAGES.

AN ACT in relation to Mortgages of Personal Property.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That no mortgage of personal property shall be valid as against the

rights and interests of any person, (other than the parties thereto), unless the possession of such personal property be delivered to, and retained by the mortgagee, or unless the mortgage provide that the property may remain in the possession of the mortgagor, and be accompanied by an affidavit of the parties thereto, or in case any party is absent, an affidavit of the parties present, and of the agent or attorney of such absent party, that the same is made in good faith to secure the amount named therein, and without any design to hinder or delay the creditors of the mortgagor.

SEC. 2. Every mortgage of personal property shall be witnessed; acknowledged by the mortgagor, or person executing the same, and when the mortgage debt is satisfied shall be released by the mortgagee, in the same manner as is provided for mortgages of real property.

Acknowledgments.

SEC. 3. Every mortgage of personal property, together with the affidavit and acknowledgment thereto, shall, to constitute notice to third parties, be filed for record in the office of the recorder of the county where the mortgagor resides, or, in case he is a non-resident of this Territory, then in the respective offices of the recorders of each and every county where the personal property may be at the time of the execution of the mortgage; and each of such recorders shall, on receipt of such mortgage, endorse thereon the time of filing the same with him, and shall promptly record the same, together with said affidavit and acknowledgment, in a book to be kept in his office, properly indexed and specially provided for the record of chattel mortgages, and when so recorded deliver the same to the mortgagee.

Must be recorded, to be notice to third parties, how.

SEC. 4. For his services as provided herein, the recorder shall be entitled to receive the same fees as are provided for like services in case of conveyances of real property.

SEC. 5. Any mortgage of personal property acknowledged and filed as hereinbefore provided, shall thereupon, if made in good faith, be good and valid as against the creditors of the mortgagor, and subsequent purchasers and mortgagees, from the time it is so filed for record until the maturity of the entire debt or obligation for the security of which the same was given, and for a period of ninety days thereafter; *Provided*, The entire time shall not exceed one year.

Valid against creditors.

SEC. 6. Personal property mortgaged may be taken on attachment, if any legal cause for attachment exist, or

Personal property, when liable to attachment.

on execution issued at the suit of a creditor of the mortgagor, but before the property is so taken, the officer must pay or tender the mortgagee the amount of the mortgage debt and interest at the place where by its terms it is made payable, if such place is within this Territory. If it specifies no place of payment, or if it be payable without this Territory, then he must deposit the amount thereof with the county treasurer of any county wherein the mortgage is recorded, payable to the mortgagee, or his order.

Copy of mortgage, in evidence.

SEC. 7. A copy of any mortgage of personal property made, acknowledged, and filed for record as provided in this act, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in this Territory without further proof of the execution of the original, if said original be lost or out of the control of the person wishing to use it.

To include bills of sale, deeds, etc.

SEC. 8. The provisions of the foregoing sections shall extend to and include all such bills of sale, deeds of trust, and other conveyances of personal property as shall have the effect of a mortgage or lien upon such property.

Mortgages of personal property foreclosed as mortgages on real property.

SEC. 9. An action for the foreclosure of a mortgage on personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced, conducted and concluded in the same manner as provided by law for the foreclosure of a mortgage or lien on real property, and without the right of redemption; *Provided*, That where the sum claimed is less than three hundred dollars, justices of the peace shall have jurisdiction for the foreclosure of the same. It shall be lawful for the mortgagor to insert in his mortgage the usual clauses of a deed of trust, with power of sale, on such notice and advertisement and in such manner as is provided for the sale of personal property taken on execution in the trustee or trustees therein named, or in the sheriff of the county wherein said property is situated, and in such cases the trustee or trustees, or the sheriff of such county may advertise and sell such personal property as may be provided in such clauses or in such deed of trust; and any such sale made as aforesaid, the mortgagee, his representatives or assigns, may in good faith purchase the property so sold or any part thereof.

Trustees' compensation.

SEC. 10. The trustee or trustees making a sale of mortgaged property, as in the foregoing section provided, shall be entitled to receive as compensation such fees as may be provided in such instrument, and failing such provision, or in case sales be made by sheriff, the same fees as upon sales of personal property on execution.

SEC. 11. Any mortgagor, agent, servant or employee of any mortgagor of personal property, who shall during the time such mortgage remains in force, destroy, conceal, sell or otherwise dispose of the whole or any part of the property mortgaged, or who shall remove the same or any part thereof from the Territory, without the written consent of the mortgagee, his legal representative or assigns, shall be deemed guilty of obtaining money under false pretenses, and on conviction thereof shall be punished by a fine not exceeding three times the value of the property described in the mortgage, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment at the discretion of the court.

Mortgagor, liability for concealing, removing or destroying mortgaged property.

SEC. 12. The term mortgage in the foregoing sections shall embrace deeds of trust and all instruments intended as security for debt.

Defining term mortgage.

SEC. 13. Nothing herein contained shall authorize any person to mortgage any part or portion of such person's personal property as may be by law exempt from seizure and sale under execution, except as security for the purchase money therefor.

Property exempt.

SEC. 14. All acts or parts of acts conflicting herewith are hereby repealed.

Approved March 13, 1884.

CHAPTER XXII.

OF TELEPHONE COMPANIES.

AN ACT to Provide for the Organization and Regulation of Telephone Companies.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any number of persons, not less than three, two-thirds of whom must be residents of this Territory, may associate and form a company for the purpose of constructing, owning, holding and working a line or lines of telephone in this Territory, upon the terms and conditions, and subject to the liabilities prescribed in this act.

What certificate
must specify.

SEC. 2. Such persons under their hands shall make a certificate which shall specify: 1. The corporate name of the company; 2. The general route of the principal line or lines of telephone, designating the principal points to be connected thereby; 3. The amount of the capital stock of the company and the number of shares into which the same shall be divided; 4. The names and places of residence of the principal shareholders, and the number of shares subscribed for by each; 5. The period of the existence of said company not to exceed fifty years. Which certificate shall be duly signed and acknowledged, and filed in the office of the Secretary of the Territory.

Privileges, when
and how
secured,

SEC. 3. Upon complying with the provisions of the preceding section, such company shall become a body corporate by the name designated in said certificate, and shall be entitled to all the rights and privileges, and subject to liabilities common to corporations in this Territory, and a certified copy of said certificate may be used as evidence in all courts and places.

Privileges and
franchises de-
fined.

SEC. 4. Such company shall have power to purchase, take, receive, hold, use and vend to others to be used any patent or patents for telephoning; and any and all rights thereunder; to purchase, take, receive, hold and maintain any and all rights, privileges and franchises relating to the business of telephoning; to make, receive by assignment, or ratify by contract or agreement for the building, maintaining, controlling or working of any telephone line or lines; to construct, purchase, lease, take, or receive, hold, control and work any telephone line or lines so purchased by them in the Territory of Utah; and to purchase, take, lease, hold, own, use and occupy any real or personal estate, rights, property, telephone lines, grants, franchises and privileges that may be proper or convenient for the complete transaction of its business or for effectually and conveniently carrying out the objects and purposes of said company. It shall also have power to appoint such directors, officers, and agents, and to make such rules, regulations and by-laws as may be necessary or proper in the transaction of its business, and not inconsistent with the laws of this Territory or of the United States.

Right of way.

SEC. 5. Such company is authorized to construct telephone lines along and upon any road or highway, or across any of the waters, or over any lands within the limits of this Territory by the erection of the necessary fixtures, including poles, posts, piers, or abutments, and the appropriation of any standing trees, except fruit and ornamental trees,

and trees within enclosures for sustaining the wires of said telephone lines; *Provided*, The same shall not be so constructed as to incommode the public use of said road or highway or injuriously interrupt the navigation of said waters; but shall be constructed under such rules and regulations as the county courts of the several counties through which said telephone line or lines shall pass may prescribe.

SEC. 6. If any person over whose lands said lines shall pass, upon which poles, posts, piers, or abutments shall be placed, or standing trees appropriated, shall consider himself aggrieved or damaged thereby, it shall be the duty of the district court of the district within which such lands are, on the application of such person, and on notice of such application being served on the president, secretary, agent or attorney of such company, to appoint three discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, that they will faithfully and impartially perform the duties required of them by this act, and it shall be the duty of said commissioners, or a majority of them, to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, poles, posts, piers, or abutments, or appropriation of standing trees; duplicates of said appraisal shall be reduced to writing and signed by said commissioners or a majority of them, one copy shall be delivered to the applicant, one to the president, secretary, agent or attorney of said company or corporation, and the original shall be filed in the office of the clerk of the district court of said district; and in case any damage shall be adjudged to said applicant, the company or corporation shall pay the amount thereof, with the costs of said appraisal; said costs to be set forth and liquidated with the damages appraised, and said commissioners shall receive for their service such compensation as the district judge may award, to be paid in like manner as the costs and damages appraised; *Provided, however*, That in no case shall any person be entitled to any damage when the application for the appointment of commissioners to appraise the same is not made to the district court within six months after the erection of said telephone lines across the lands of such persons.

Damages, how ascertained and collected.

Compensation of commissioners.

Application must be made within six months.

SEC. 7. Any telephone company may at any time with the consent of the persons holding two-thirds of the issued stock of said company, sell, lease, assign, transfer and convey any rights, privileges, franchises and property of said company.

Power of sale.

Employees ex-
empt from
juries.

SEC. 8. All operators, clerks and persons in the employ of any telephone company, while employed in the offices of said company or along the route of its telephone lines shall be exempt from serving on juries.

SEC. 9. Sections 2204, 2205, 2206 and 2207 of the Compiled Laws of Utah, in so far as they are applicable to telephone companies, are hereby made a part of this act.

SEC. 10. This act shall not be construed to limit or impair any rights of any telephone company already in operation in this Territory.

Approved March 13, 1884.

CHAPTER XXIII.

OF WELLSVILLE CITY.

AN ACT amending "An Act to Incorporate the City of Wellsville," approved January 19th, 1866.

Defining boun-
daries.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 1 of an act entitled "An Act to Incorporate the City of Wellsville," approved January 19, 1866, be and the same is hereby amended so as to read as follows: SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That all of that district of country embraced in the following boundaries in Cache County, to-wit: Commencing at the southwest corner of the northwest quarter of Section fifteen of Township ten north of Range one west, thence north from said place of beginning four and one-fourth miles, thence east three miles, thence south four and one-fourth miles, thence west three miles to the point of beginning, shall be known and designated under the name and style of Wellsville City, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid, and shall have perpetual succession and may have and use a common seal which they may change and alter at pleasure.

SEC. 2. That Section 30 of said act be and the same is hereby amended so as to read as follows: SEC. 30. The

city council of said city shall have power by ordinance and enforcement thereof, to license, tax, and regulate, or to absolutely prohibit the manufacture, sale, or giving away in any quantity of spirituous, vinous, fermented, or other intoxicating liquors; *Provided*, That if any person, corporation or association of persons is licensed or permitted within said city to carry on the business in whole or in part mentioned in this Section, then any other person, corporation or association of persons not prohibited by the laws of this Territory, may carry on said business in like manner and under restriction and regulations.

City council, its powers.

SEC. 3. That Section 32 of said act be and the same is hereby amended so as to read as follows: SEC. 32. The city council of said city shall have power to license, tax, and regulate tavern and hotel keepers, boarding, victualing, or coffee houses and restaurants or the keepers thereof.

To tax hotels and boarding houses.

SEC. 4. That Section 34 of said act be and the same is hereby amended so as to read as follows: SEC. 34. The city council of said city shall have power by ordinance and enforcement thereof to license, tax and regulate the business of keeping, or furnishing for use billiards or pool tables, pin alleys, nine or ten pen alleys, table and ball alleys, or shooting galleries; to suppress or restrain all disorderly houses; to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming, or any kinds of gambling; to prevent any riot, disturbance or disorderly assemblage, and to restrain and punish for vagrancy, mendicancy, street begging and prostitution.

To license and tax gaming.

Approved March 13, 1884.

CHAPTER XXIV.

OF FUGITIVES FROM JUSTICE.

AN ACT Relating to Proceedings against Fugitives from Justice.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the Gov-

Of rewards.

ernor may offer a reward, not exceeding five hundred (500) dollars, payable out of the Territorial treasury, for the apprehension:—

1. Of any convict who has escaped from the Territorial penitentiary; or,

2. Of any person, who has committed, or is charged with the indictment with the commission of an offense punishable with death.

Return of fugitives.

SEC. 2. The Governor of this Territory may, in any case authorized in the Constitution and laws of the United States, appoint agents to demand of the executive authority of any State or other Territory, or from the executive authority of any foreign government, any fugitive from justice and the compensation of such agents shall be a charge against the Territory.

U. S. Dist. Attorney to investigate.

SEC. 3. Whenever a demand shall be made upon the Governor of this Territory, by the Governor of any State or other Territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such State or Territory, with any crime, the United States district attorney when required by the Governor, shall forthwith investigate the grounds of demand, and report to the Governor all material facts which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for any offense against the laws of this Territory, or of the United States, or by virtue of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up.

Governor of foreign State to issue warrant to return prisoner, when.

SEC. 4. If the Governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the Territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this Territory, at the expense of such agents, and shall also by such warrants, require the civil officers within this Territory, to afford all needful assistance in the execution thereof.

Warrants may be issued, when, and by whom.

SEC. 5. Whenever any person shall be found within this Territory, charged with any offense committed in any State or other Territory, and liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of such State or other Territory, any court or magistrate authorized to issue warrants in

criminal cases, may, upon complaint on oath, setting forth the offense and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within this Territory, to answer to such complaint as in other cases.

SEC. 6. If, upon the examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the Governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain the warrant of the Governor, and to abide the order of such court or magistrate in the premises.

When persons may, be held to await warrants from the Governor.

SEC. 7. If such person shall not recognize, or if he shall be charged with a capital crime, he shall be committed to prison, and there detained [until] such day, in like manner as if the offense charged had been committed within this Territory, and if the person so recognizing shall fail to appear according to the condition of this recognizance, he shall be defaulted, and the same proceedings shall be had as in the case of other recognizances entered into before such court or magistrate.

Failing to give surety, may be committed to prison.

SEC. 8. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew for his appearance at some other day; and if when ordered, he shall not so recognize, he shall be committed and detained as before; *Provided*, That whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

When person may be discharged.

Proviso.

SEC. 9. The complainant in any such case shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid weekly, or otherwise, as may be ordered by the court or magistrate; and if the charge for his support in prison shall not be so paid, the jailor may, on the failure of the

Complainant to be liable for costs and charges when, etc.

complainant, discharge such person from his imprisonment.

Approved March 13, 1884.

CHAPTER XXV.

OF LICENSES.

AN ACT authorizing County Courts to Grant Licenses.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That on and after the first day of April, eighteen hundred and eighty-four, no person shall be permitted to carry on the business of merchants, retailers, peddlers, auctioneers, brokers, pawnbrokers, money changers, traveling showman, theatrical performances, circus, and menageries, without first obtaining a license therefor from the county courts in their respective counties, as hereinafter provided.

Merchants,
showmen, etc,
must obtain
licenses.

Book of licenses
to be kept.

Rate of
license.

Proviso.

SEC. 2. The county court in their respective counties are hereby authorized to provide for the granting of licenses as contemplated in the first section of this act. They shall also provide a suitable book of printed forms with stubs, said stubs shall contain a duplicate copy of all licenses issued, and they shall be numbered consecutively; said county courts shall fix the price of all licenses granted by them, which price shall be uniform for all licenses of the same class and shall not exceed for any one license on any business named in this act, the sum of one hundred dollars for any one year; *Provided*, That the price fixed for a quarter yearly license may be made the price for any time less than three months; and said county courts shall require payment for all licenses invariably in advance. Upon the applicant paying the required amount to the county clerk, said clerk shall issue the desired license for any term not exceeding one year.

License not
transferable.

SEC. 3. No such license shall be transferable unless such transfer shall be sanctioned by the county court or probate judge.

SEC. 4. If any person shall violate the provisions of any of the preceding sections of this act he shall be guilty of a misdemeanor. Penalty for violation of act.

SEC. 5. Nothing in this act shall be construed to apply to peddlers of perishable fruits and vegetables, nor to any person carrying on business in an incorporated city. Certain persons excepted.

Approved March 13, 1884.

CHAPTER XXVI.

OF POOR PERSONS.

AN ACT providing for the Support of Poor Persons.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That every poor person, who is unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall refuse to support his or her father, grandfather, mother, grandmother, child, or grandchild, sister or brother, when directed by the county court of the county where such poor person shall be found, whether such relative shall reside in the same county or not, shall forfeit and pay to the county court for the use of the poor of their county, such sum as may be by the county court deemed adequate and proper to be paid, not exceeding six dollars per week for each and every week for which they or either of them shall fail or refuse, to be recovered in the name of the county, for the use of the poor aforesaid, before a justice of the peace, or any other court having jurisdiction; *Provided*, That whenever any persons become paupers from intemperance or any other bad conduct, they shall not be entitled to support from any relative except parent or child; *And provided further*, That such poor person entitled to support from any such relative may bring an action against such relative for support, in his or her own name and behalf. Who must support, etc.

Penalties for refusal.

Proviso.

Proviso.

SEC. 2. The children shall first be called upon

Degree of
liability.

Proviso.

to support parents, if they be children of sufficient ability, and if there be none of sufficient ability, the parents of such person shall next be called upon, and if there be no parents nor children, the brothers and sisters shall next be called upon, and if there be no brothers nor sisters, the grandchildren of such poor person shall next be called upon, and then the grand parents; *Provided*, Married females, while they live with their husbands, shall not be liable to a suit for maintenance beyond the interest or incomes of the estate of such married female held in her own right.

Approved March 13, 1884.

CHAPTER XXVII.

OF DELEGATE TO CONGRESS.

AN ACT providing for the Filling of a Vacancy in the office of Delegate to the House of Representatives of the United States for the Territory of Utah.

Special election
to be called.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That in case of the death, resignation, or other disability of the Delegate to the House of Representatives of the United States for the Territory of Utah, it is hereby made the duty of the Governor, within twenty days after receiving notice of such vacancy, to call a special election to fill said office.

How conducted
etc.

SEC. 2. The special election provided for in this act shall be held, conducted, and returns thereof made in the same manner as is now, or may hereafter be provided for general elections in the Territory.

Approved March 13, 1884.

CHAPTER XXVIII.

OF SPANISH FORK CITY.

AN ACT amending "An Act Incorporating Spanish Fork City," approved January 19, 1855.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of Spanish Fork City shall have power, and is hereby authorized by ordinance, and enforcement thereof within the corporate limits to regulate, restrain, or prohibit the running at large of horses, mules, cattle, sheep, swine, goats, and all kinds of poultry, and when so running at large, to distrain, impound and sell the same for the penalty, and costs incurred therein, and impose penalties by fine upon the owner of the same, for violation of such ordinance; *Provided*, That the proceeds of such sale shall be paid into the treasury of the county, wherein such city is located, less the amounts of costs and expenses incurred in distraining, impounding, and selling the same, to be used as provided for in Section 408 of the Compiled laws of Utah.

SEC. 2. To enforce the payment of all city taxes by levy and sale of the real or personal property of any delinquent taxpayer, in the manner provided by law for assessing and collecting Territorial and county taxes. The city assessor and collector shall have the same power within his jurisdiction as is exercised by county assessors and collectors, and any city taxes assessed shall be a lien on the property assessed until paid. The city shall also have power to annually assess, collect, and expend a water tax to supply the city with water for domestic and irrigating purposes, and may regulate the use of water for manufacturing purposes, and to tax individuals for the use of such water, in proportion to the amount of water used by each; *Provided*, That nothing herein contained shall be so construed as to interfere with the water rights accrued by priority of appropriation.

SEC. 3. To direct and control the location of railroad

tracks, within the city, and regulate the use of locomotive engines therein, and regulate the rate of speed at which the trains may run within the inhabited portions.

SEC. 4. To fix and collect a license tax on, and regulate billiard, and pool tables, and bowling alleys, in public places, and punish the proprietors or keepers thereof, for violating the provisions of any city ordinance relating to the same.

Approved March 13, 1884.

CHAPTER XXIX.

OF INCORPORATION OF TOWNS.

AN ACT providing for the Incorporation of Towns of not Less than Three Hundred Inhabitants.

SECTION. 1 *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That a majority of the taxpayers of any town having a population of not less than three hundred desiring to incorporate, may, on petition to the county court of the county in which said town is situated, said petition to set forth the section, township, entry and boundary lines thereof, which, being approved by said court, and a copy thereof filed in the office of the county recorder, and on compliance with the provisions of this act, be, and are hereby, constituted a body corporate and politic under the name and style of said town, and each may have and use a common seal, which they may change and alter at pleasure.

When and how
a town may in-
corporate.

SEC. 2. There shall be a board of trustees in said town, to consist of a president and four trustees, who shall have the qualifications of electors of said town, and shall be chosen by the qualified voters thereof, and shall hold their office for two years, and until their successors shall be elected and qualified. The board of trustees shall judge of the qualifications, election and return of their own members; and a majority of them shall form a quorum to do business at all special or general meetings, due notice of which has been given, and the president shall preside at all meetings when present, and have the casting vote. When the president is absent, one of the trustees may be appointed

Board of trustees
provided for, etc.

by the board to act in his place during his absence; and any vacancy in any of the offices of such corporation, occasioned by death, resignation, removal or otherwise, may be filled for the unexpired term of such office by a majority vote of the whole board.

SEC. 3. The president and trustees in each town, before entering upon the duties of their office, shall be commissioned by the Governor, and shall take and subscribe an oath or affirmation, that they will support the Constitution of the United States and the laws of this Territory, and that they will well and truly perform all the duties of their offices to the best of their skill and ability, which oath shall be filed with the Secretary of the Territory.

Board must be
commissioned by
the Governor.

SEC. 4. One president and four trustees shall be elected biennially in each town at the time specified by law, for the election of county and Territorial officers; said election shall be held and conducted in the manner as provided by law for holding elections, and at the first election all voters legally qualified shall be entitled to vote.

Elections, when
held.

SEC. 5. The clerks of election, in each town, shall leave with each person elected, or at his usual place of residence, within five days after election, a written notice of his election; and each person so notified, shall, within ten days after the election, take the oath or affirmation hereinbefore mentioned, a certificate of which oath shall be deposited with the clerk, whose appointment is hereinafter provided for, and be by him preserved; and all subsequent elections shall be held, conducted, and returns thereof be made, as may be provided for by ordinance of the board of trustees.

Duties of elec-
tion clerks.

SEC. 6. The board of trustees, in each town, shall have the following powers, to-wit: First—To purchase, hold, or convey all necessary estate, real or personal, for the use and benefit of the corporation.

Powers of
board of trustees.

Second—To prevent, abate, and remove nuisances, and adopt such other measures for the public health, as they may deem proper.

Third—To purchase, hold, own, and lay out graveyards or cemeteries, and regulate the burial of the dead.

Fourth—To restrain from running at large, horses, cattle, sheep, goats, swine and all kinds of poultry, in such towns, under such penalties and regulations as may be prescribed by the ordinances of such towns.

Fifth—To provide for the protection of shade trees, monuments, and other public property in such town.

Sixth—To license, tax, and regulate the manufacturing, vending, or giving away of spirituous, vinous or fer-

mented liquors, and to license and regulate hotel or tavern keepers, eating houses and restaurants, merchants, grocers and peddlers.

Seventh—To license all exhibitions of showmen, concerts, theatricals, circuses, or other traveling shows, public dances or amusements, or to suppress any of the foregoing which are indecent.

Eighth—To restrain and punish vagrants, prostitutes and libertines.

Ninth—To appoint policemen, and watchmen, and prescribe their duties, powers, and qualifications.

Tenth—To prohibit and suppress disorderly, lewd or gambling houses, and all devices for gambling, and to suppress any drunkenness, rout, riot, noise, disturbance, or disorderly assemblage.

Eleventh—To levy and collect an annual tax for general corporation purposes on all such property as shall be subject to county and Territorial taxes, and such tax shall, when so levied, constitute a lien on all such property, and shall be collected as county and Territorial taxes are collected; *Provided*, All taxes for such purposes, in any one year, shall not exceed one-fourth of one per cent. on the assessed valuation of the property so assessed, unless two-thirds of the electors voting at a special meeting called for that purpose, shall vote a larger per cent. to be levied; but in no case shall said tax exceed, nor electors be allowed to levy more than one-half of one per cent. of the assessed valuation aforesaid in one year.

Twelfth—To lay out, construct, open, grade, pave, and otherwise improve streets, lanes, alleys, sidewalks, or cross walks, and to prohibit the encumbering of sidewalks with any material whatever, and riding or driving thereon, except to cross the same.

Thirteenth—To lay out, construct, open, and keep in repair, canals, water ditches, or water pipes for irrigation, domestic or other use for the inhabitants of such town.

Fourteenth—To direct in the prosecution and defense of actions at law in which such towns may be a party, and may sue and be sued in their corporate names.

Fifteenth—To fix and establish the compensation of the officers made elective or appointed by the board.

Sixteenth—To prevent horse racing and immoderate driving or riding in the streets of said town.

Seventeenth—To prevent the running at large of dogs, by imposing a tax on the same, or otherwise, or to author-

ize their destruction, in a summary manner, when running at large contrary to ordinance of such town.

Eighteenth—To make, ordain, pass, establish and enforce such ordinances and regulations, not repugnant to the Constitution of the United States, or the laws of this Territory, for the purpose of carrying into effect the provisions of this act, as they deem proper; and to repeal, alter or amend the same, at pleasure; but no such ordinance or regulations shall take effect or be enforced until the same shall have been published ten days in some newspaper having a general circulation in such town, or by notice posted in not less than three public places therein.

Nineteenth—To appoint a clerk, a marshal, and such other officers as may be necessary for the good order and well being of such town; define their duties, remove them from office at pleasure, and require to take and subscribe an oath, and give such bonds as shall be provided by ordinance, which oath and bond shall be filed with the board of trustees.

SEC. 7. The board of trustees of each town may ordain and provide such reasonable fines, forfeitures and penalties as they may deem proper, in any sum less than that prescribed for like crimes in the laws of the Territory, to be prosecuted before any justice of the peace in the county, in the name of the corporation, and all expenses incurred in the unsuccessful prosecution for the recovery of any fine, or penalty, or forfeiture, shall be paid by the corporation, and all fines, forfeitures and penalties, when collected, shall be paid to the corporation, as may be provided by ordinance; *Provided*, The justice's court shall be held always within the corporate limits, when any other than a justice residing in said town is called to try any case, he shall be required to hold court in said town.

Powers of board of trustees.

SEC. 8. The clerk of the board of trustees in each town shall have the custody of and safely keep the corporate seal, records, books and papers thereof, intrusted to him by the board, and attend all meetings of the trustees and record all their proceedings, and he shall audit all accounts allowed by such board of trustees, and perform such other duties as may be required of him.

Duties of the clerk.

SEC. 9. The marshal of each town shall possess the same powers, be subject to like liabilities, and exercise the same privileges as are possessed and conferred by law upon constables, to execute such legal orders as may be required of him, and to assess and collect all taxes levied by the trustees of such town, in the same manner as county and

Powers of the Marshal etc.

Territorial taxes are collected, so far as consistent with the provisions of this act, and perform such other lawful duties as may be required by the board of trustees.

SEC. 10. This act shall be in force on and after the first day of April, A. D. 1884 (and may be amended or repealed at the pleasure of the Legislative Assembly).

Approved March 13, 1884.

CHAPTER XXX.

OF LAWS OF 1880.

AN ACT amending Sections 4, 7, 8, 11, 19 and 21 of Chapter XIX. of the Laws of 1880.

SECTION. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 4 of Chapter XIX. of the Laws of Utah of 1880 be and the same is hereby amended to read as follows: SEC. 4.

School districts
may levy tax
annually.
Amount of.

Whenever it shall be necessary to raise funds to purchase, build, repair or furnish school houses, or for other school purposes, an estimate of the approximate cost thereof shall be made by the trustees, and the rate per cent. may be fixed at any sum not exceeding two per cent. per annum, as shall be decided by a majority vote of the property taxpayers resident in the district, present at a meeting called for that purpose, to be assessed and collected as a special tax upon all the taxable property in the district. The trustees of any school district having a population of over twelve hundred, when authorized by a majority vote of the property taxpayers resident in the district, present at a meeting called for that purpose, may establish and maintain a graded school, or a graded department in a school in such district, in which pupils may be instructed in higher branches of education than those usually taught in common schools, and pupils over eighteen years of age may be admitted to and instructed in such school or department, on such terms as to tuition and otherwise as the trustees may prescribe. In case of a challenge of the right of any person to vote on said tax, the oath of such person as to qual-

Challenges, how
decided.

ification, his tax receipt for the past year, or a copy of the tax list showing that said person owns taxable property in the district, shall be received as evidence of such right to vote; *Provided*, The trustees shall have power to assess and collect annually a tax of one-fourth of one per cent. on all taxable property in the district without calling a meeting for that purpose.

Proviso.

SEC. 2. That Section 7 of said act is hereby amended to read as follows: SEC. 7. The assessor shall, within such time as the trustees may direct, make an assessment at a fair cash valuation, of all the taxable property in his district, and report the same to the trustees. The assessor is hereby empowered to administer oaths in the discharge of his official duty, and may require persons to give a statement of their taxable property under oath. The assessor, when he deems it necessary, may leave with the person to be assessed, or at his residence, or place of business, a blank form of the assessment list, and with corporations, firms, or associations, suitable forms, requiring the taxpayer to fill out and return the same to the assessor within twenty days from date of service; and any person, corporation, firm, or association, furnished with such blank forms, must comply with the requirements thereof, or be liable to a fine of not to exceed one hundred dollars for each neglect. If any person shall wilfully and knowingly make a false list to the assessor, or make a false statement of his property, or of property under his charge, he shall be deemed guilty of a misdemeanor, and on conviction thereof may be fined in any sum not exceeding one hundred dollars, or imprisonment not exceeding one hundred days, or both. The trustees shall give notice by advertising or posting notices as in calling a tax meeting, of the time and place when they will meet to hear and determine complaints, if any, in regard to the assessed valuation of any property, and may equalize and correct the same; and they shall have the power to remit or rebate the taxes of any indigent person, to any amount not exceeding five dollars on any such assessment. They shall fix the time within which the tax shall be paid, which in no case shall be less than thirty days, and approve the assessment roll and hand it to the collector to collect the tax.

Powers and duties of the assessor.

Penalty for making false return.

Trustees to equalize assessments, etc.

SEC. 3. That Section 8 of said act be and the same is hereby amended to read as follows: SEC. 8. The collector shall forthwith notify the taxpayers of the district of the amount of their tax and where the same is payable, and shall proceed to collect the same within the time specified

Duties of the collector.

by the trustees, and pay the money collected to the district treasurer, if there be one, otherwise to the trustees, and all taxes remaining unpaid for sixty days after they become due shall become delinquent, and a list thereof shall be handed to the county collector of the county in which said district is located, which collector shall immediately proceed to collect the said tax in the manner as provided for the collecting of Territorial, school and county taxes, in "An Act to Provide Revenue for the Territory of Utah and the several Counties thereof," approved February 22, 1878. The collector shall receive such fees and mileage for collecting delinquent school tax as are provided for collecting delinquent taxes under said act. The delinquent taxes thus collected shall be paid into the county treasury and placed to the credit of such school district, and be drawn therefrom upon the order of the trustees of such district.

When tax becomes delinquent.

Manner of collection.

Fees of collector

Board of examiners to be appointed.

Their powers and duties.

SEC. 4. That Section 11 of said act be and the same is hereby amended to read as follows: SEC. 11. The county court of each county shall appoint in their respective counties, where not already done, a board of examiners to consist of the county superintendent and two other competent persons, who shall hold examinations and judge of the qualifications of school teachers applying for schools; and all applicants of a good moral character considered competent shall receive a suitable certificate signed by the board, which certificate shall be valid for only one year from its date, and without which no person shall be eligible to employment as teacher by the trustees, and such districts employing other than eligible teachers shall forfeit their apportionment of any public school fund. The services of the board of examiners shall be paid for by the county.

SEC. 5. That Sections 19 and 21 of said act be and the same are hereby amended by striking out the words "county treasurer" wherever they appear in said Sections and inserting in lieu thereof the words "Territorial sub-treasurer."

Approved March 13, 1884.

CHAPTER XXXI.

OF PROVO CITY.

AN ACT amending "An Act to Incorporate Provo City,"
approved Jan. 21, 1864.

SECTION. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 1 of an "Act to Incorporate Provo City," approved January 21, 1864, is hereby amended by striking out of said section all that portion after the words "to-wit," in the third line of said section, and before the word "shall" in the eighth line thereof, and inserting in lieu thereof, the following: Commencing on the west bank of Provo River at a point where the north line of Section (7) Township (6) South of Range three (3) East intersects the said river, thence southerly along the west bank of the said river to a point where the north section line of Section thirty-six (36) Township six (6) South of Range two (2) East intersects the said river, thence west to the northwest corner of Section thirty-five (35) Township six (6) South of Range two (2) East then south to the north bank of Provo River, thence west along the north bank of said river to the shore of Utah Lake, thence southerly and easterly along the shore of said lake to a point where the quarter section line running east and west through Section eighteen (18) Township (7) South of Range three (3) East intersects the shore of said lake, thence east to the east line of Section seventeen (17) Township (7) South of Range (3) East, then north to the northeast corner of Section seventeen (17) Township six (6) South of Range three (3) East, thence west to the southwest corner of Section eight (8) Township six (6) South of Range three (3) East, thence north to the northwest corner of said Section eight (8), thence west to the point of beginning.

SEC. 2. The city council of said city shall have power by ordinance and enforcement thereof to license, tax and regulate, or to absolutely prohibit the manufacture, sale or giving away in any quantity of spirituous, vinous, fermented or other intoxicating liquors; *Provided*, That if any person, corporation or association of persons is author-

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ized or permitted within said city to carry on the business in whole or in part, mentioned in this Section, then any other person, corporation, or association of persons, not prohibited by the laws of the Territory, may carry on said business in like manner and under like restrictions and regulations.

SEC. (3). Sections 31 and 33 of an Act incorporating Provo City, approved January 21, 1864, and all acts and parts of acts conflicting herewith are hereby repealed.

SEC. 4. This Act shall be in force from and after its passage.

Approved March 13, 1884.

CHAPTER XXXII.

OF LEHI CITY.

AN ACT amending an Act to Incorporate the City of Lehi, approved February 5, 1852.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of Lehi City is authorized and empowered to regulate and control the water running into or through or arising in said city, used for domestic and irrigating purposes and may regulate the use of water for manufacturing purposes, and may annually assess and collect a tax from individuals in proportion to the amount of water used by each, and expend said tax in controlling, regulating and supplying said city with water, for domestic, irrigating and manufacturing purposes; *Provided*, That nothing herein contained shall be so construed as to interfere with the water rights accrued by priority of appropriation.

SEC. 2. The city council shall have power to direct and control the location of railroad tracks hereafter laid and to regulate the rate of speed at which the trains may run within the inhabited portion of the city, and to regulate and control the location of gas works, telegraph and telephone poles and all improvements of a similar nature.

SEC. 3. The city council shall have power to restrain, regulate and prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry, and authorize the distraining, and impounding thereof, and may sell the same for the penalty and costs incurred thereon by fine upon the owners of the same for any violation of city ordinance in relation thereto; *Provided*, That the proceeds of such sale shall be paid into the treasury, of the county wherein said city is located, less the amount of costs and expenses incurred in distraining, impounding and selling, the same, to be used as provided for in Section 408 of the Compiled Laws of Utah; *Provided further*, That such costs and expenses shall not exceed those provided for in Section 413, Compiled Laws of Utah, for similar service.
Approved March 13, 1884.

CHAPTER XXXIII.

OF AMERICAN FORK CITY.

AN ACT amending "An Act to Incorporate American Fork City, Utah County," approved June 4, 1853.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of American Fork City shall have power to direct and control the location of railroad tracks hereafter laid within said city; and to regulate and control the location of gas works, canals for irrigation and other purposes, telegraph and telephone poles, and all improvements of a similar nature.

SEC. 2. To restrain, regulate or prohibit the running at large of cattle, horses, mules, sheep, swine, goats and all kinds of poultry; and to authorize the distraining, impounding thereof, and may sell the same for the penalty and costs incurred thereon by fine imposed upon the owners of the same for any violation of city ordinance in relation thereto; *Provided*, That the proceeds of such sale shall be paid into the treasury of the county wherein said city is

located, less the amount of costs and expenses incurred in distraining, impounding and selling the same, to be used as provided for in Section 408 of the Compiled Laws of Utah: *Provided further*, That such costs and expenses shall not exceed those provided for in Section 413, Compiled Laws of Utah, for similar services.

Approved March 13, 1884.

CHAPTER XXXIV.

OF ADOPTION OF CHILDREN.

AN ACT providing for the Adoption of Children.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That any person desiring to adopt the child of another may do so in the following manner.

Manner of
adopting chil-
dren.

SEC. 2. The parents, guardians or other person or persons having lawful control, or custody of any minor child may make a statement in writing before the probate judge of the county where the person desiring to adopt such child resides, that he, she or they, voluntarily relinquish all right to the custody of, and power and control over such child (naming such child), and all claim and interest in and to the services and wages of such child, to the end that such child shall be fully adopted by the party desiring to adopt such child, which statement shall be signed and sworn to by the party making the same before said probate judge, in the presence of at least two witnesses; and the person desiring to adopt such child shall also make a statement in writing to the effect that he or she freely and voluntarily adopts such child (naming the child) as his or her own, with such limitations and conditions as shall be agreed upon by the parties. Said statement shall also be signed and sworn to by the party making the same before said probate judge, in the presence of at least two witnesses; *Provided*, In all cases where such child shall be of the age of fourteen years and upward, the written consent of such child

Proviso.

shall be necessary to the validity of such proceeding; *And provided further*, Whenever it shall be desirable, the party adopting such child may, by stipulations to that effect in such statement, adopt such child and bestow upon him or her equal rights, privileges, and immunities of children born in lawful wedlock, and such statement shall be filed with and recorded by said probate judge, in a book kept in his office for that purpose.

Proviso.

SEC. 3. And such probate judges shall appoint a time and place for the hearing of said matter, and shall give three weeks' notice thereof to all persons who may be interested therein, by publication thereof in a newspaper published in said county, and in case no paper is published in said county then the notice shall be published in a newspaper printed in the Territory, having general circulation in said county.

Notice to be given of time of hearing.

SEC. 4. At the time and place of hearing such matter, if said hearing shall not be adjourned, the said probate judge shall render a decree therein, in accordance with the conditions and stipulations of said statement; *Provided*, In case it shall appear to the satisfaction of such probate judge, that such proceedings are not for the best interest of the child or children, he may refuse to enter such decree, and the matter shall thereupon be dismissed.

Court to render a decree.

Proviso.

SEC. 5. All decrees entered in such case in conformity with the provisions and requirements hereinbefore named, shall be conclusive upon all the persons interested [in] such proceedings, and the child or children, thus adopted shall take the surname of the person adopting the same and all relations of parents and child, agreeably to such stipulations and the decree of the probate court shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and custody of such parent or parents and shall possess and enjoy all the rights, privileges, inheritances, heirship and immunities of children born in lawful wedlock.

Decree, when entered, to be conclusive upon all persons, etc.

SEC. 6. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife not consenting is capable of giving such consent.

Married persons may not adopt children, except, etc.

SEC. 7. The parents of an adopted child are, from the time of the adopting, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

When responsibility of parents ends.

Fees of probate
judge.

SEC. 8. The probate judge shall be entitled to charge the same fees for such services as now are provided by law for like services in other cases.

Approved March 13, 1884.

CHAPTER XXXV.

OF SALT LAKE CITY.

AN ACT amending "An Act Incorporating Salt Lake City," approved January 20, 1860.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of Salt Lake City be and is hereby authorized and empowered by ordinance and the enforcement thereof: First—To license, tax and regulate the use of billiard or pool tables and prohibit the use of all kinds of tables in any public place in the city on which gaming for money or the representative thereof is allowed, and to punish the owners and keepers of said tables for the violations of any ordinance of the city. Second—To license, tax and regulate the use of nine or ten pin alleys and all kinds of ball and pin alleys and the runways thereof in any public place in said city, in or on which games are played; and to punish the owners and keepers of such alleys and runways to be used for the playing of games therein and thereon contrary to any ordinance of said city; licensing or regulating their use for such purposes, and the playing of all games on such tables and in such alleys and on the runways of such alleys, shall be deemed to be by and with the consent and permission of the owners and keepers thereof; *Provided*, That the fee for such license shall in no case exceed fifty dollars per annum for each of such tables nor fifty dollars for each runway of such alleys nor be less than twenty-five dollars per annum for each table and runway as aforesaid.

SEC. 2. To prohibit the playing of any game for money or other property or thing representing money or

other property; and to punish all persons who shall play at any game for money or other property or thing representing money or other property.

SEC. 3. The mayor of Salt Lake City shall have power to appoint, by and with the advice and consent of the city council, the regular police of said city to the number which may from time to time be prescribed by the city council, and to remove the same at pleasure. He shall also have power to appoint special police, when, in his judgment the public good may require such action; *Provided*, That such special police shall not be appointed for a longer period than ten days without the consent of the city council.

SEC. 4. To prohibit the employment of any female to serve in the selling, giving away, or other disposition or delivery of spirituous, vinous, and malt liquors in any saloon or place in said city in which such liquors or any of them are so disposed of or delivered to be drunk on the premises where so sold or otherwise disposed of, and to punish any female so employed and serving, and all persons by whom such females are employed.

Approved March 13, 1884.

CHAPTER XXXVI.

OF MANTI CITY.

AN ACT amending an Ordinance to Incorporate the City of Manti, approved February 6, 1851.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of Manti City, shall have power to annually assess, collect and expend, a water tax, to supply the city with water, for domestic and irrigating purposes, and may regulate the use of water for manufacturing purposes, and to tax individuals for the use of such water, in proportion to the amount of water used by each; *Provided*, That nothing herein contained shall be construed to interfere with the water rights accrued by priority of appropriation.

SEC. 2. They shall have power to direct and control the location of railroad tracks within the city, and regulate the rate of speed at which the trains may run within the inhabited portion of said city.

Approved March 13, 1884.

CHAPTER XXXVII.

OF COMPILED LAWS.

AN ACT amending Section 576, of the Compiled Laws of Utah.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That Section 576 of the Compiled Laws of Utah be and the same is hereby amended by inserting after the word "by-laws" and before the word "establish," in line ten of said section the following, to-wit: "and may provide therein for conferring degrees and issuing diplomas."

Authorizing Deseret University to issue degrees, etc.

Approved March 13, 1884.

CHAPTER XXXVIII.

OF MOUNT PLEASANT.

AN ACT amending an Act Incorporating Mount Pleasant, in Sanpete County, approved February 20, 1868.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the city council of Mount Pleasant shall have power to annually assess, collect and expend a water tax to supply the city with water for domestic and irrigating purposes, and may regulate the use of water for manufacturing purposes, and to tax indi-

viduals for the use of such water in proportion to the amount of water used by each; *Provided*, That nothing herein contained shall be construed to interfere with the water rights accrued by priority of appropriation.

Approved March 13, 1884.

CHAPTER XXXIX.

OF UTAH AND WASATCH COUNTIES.

AN ACT changing the boundaries of Utah and Wasatch Counties.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Chapter XVI. of the Laws of this Territory, approved February 18, 1880, is hereby amended as follows: all that portion of country lying south of Township line, between ten and eleven South; and west of Township line between nine and ten, Range East, the same heretofore having been a portion of Wasatch County, is hereby attached to, and made part of Utah County.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Approved March 13, 1884.

CHAPTER XL.

OF COUNTY BOUNDARIES.

AN ACT amending an Act changing the boundaries of Kane, Iron and Washington Counties and creating Garfield County, approved March 9, A. D. 1882.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That an act changing the boundaries of Kane, Iron and Washington Counties and creating Garfield County, approved March 9, A. D. 1882, be and the same is hereby amended as follows: in Section 3, line ten (10) between the figures "thirty-four (34)" and the word "range" insert the word "South," and in line twelve (12) between the words "west" and "to" insert the following: to the northeast corner of Township thirty-five (35) South Range seven (7) West, thence west to the Township line between Ranges seven (7) and eight (8) West, thence south on said line; in Section four (4) line twelve (12) between the words "line" and "two" insert the following: "to the Township line between Ranges seven (7) and eight (8) West, thence north on said line to the northwest corner of Township thirty-five (35) South Range seven (7) West, thence east.

Approved March 13, 1884.

CHAPTER XLI.

OF SURVEYOR GENERAL.

AN^d ACT to repeal certain acts relating to the creating of the office of Surveyor General and prescribing the duties thereof.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That an act en-

titled "An Ordinance creating a Surveyor General's office, etc.," approved March 2, 1850; "An Act to more clearly authorize the Surveyor General to give certificates of his surveys and to further legalize the certificates he has given," approved January 19, 1866; "An Act to regulate Surveyors and Surveying," approved March 3, 1852; and so much of Section 4 of "An Act to regulate Surveyors and Surveying," approved March 3, 1852, as relates to surveying by the surveyor general are hereby repealed.

Repealing acts relating to the office of surveyor general.

SEC. 2. It is hereby made the duty of the surveyor general to distribute all books, records, plats and papers of surveys made within the counties in the Territory in his possession and appertaining to his office, to the county surveyors, the portions relating to their respective counties, and all other property belonging to said office to the county surveyor of Salt Lake County and when so distributed to be the property of said counties.

Books, papers, etc., to be filed in office of surveyor, Salt Lake County.

SEC. 3. The office of surveyor general of Utah Territory is hereby abolished.

Approved March 13, 1884.

CHAPTER XLII.

OF LAWS OF UTAH.

AN ACT amending Section 648 of the Compiled Laws of Utah.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:*

SEC. 2. That Section 648 of the Compiled Laws of Utah be and the same is hereby amended by adding to the end thereof the following: "If the mortgagee fail to discharge or release any mortgage after the same has been fully satisfied, he shall be liable to the mortgagor for double the damages resulting from such failure. Or the mortgagor may bring an action against the mortgagee to compel the discharge or release of the mortgage, after the same has

Amending Sec. 648 Compiled Laws, relating to release of mortgages.

been satisfied. And the judgment of the court must be, that the mortgagee discharge or release the mortgage and pay the mortgagor the costs of suit, including a reasonable attorney's fee, and all damages resulting from such failure.

Approved March 13, 1884.

CHAPTER XLIII.

OF OGDEN CITY.

AN ACT amending "An Act to Incorporate Ogden City," approved January 18, 1861.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 31 of "An Act to Incorporate Ogden City," approved January 18, 1861, be and the same is hereby amended by adding thereto the following: "and to license, tax and regulate the manufacture and sale of spirituous, vinous, fermented, malt and intoxicating liquors."

SEC. 2. That Section 33 of said act be and the same is hereby amended by inserting between the words "City" and "except" in the fourth line of said section the following words: "and to prohibit such selling or giving away."

Approved March 13, 1884.

CHAPTER XLIV.

OF ESTATES OF DECEDENTS.

AN ACT in relation to Estates of Decedents.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah as follows:*

TITLE I.

WILLS.

- CHAPTER I. *Execution and Revocation of Wills.*
 CHAPTER II. *Interpretation of Wills.*
 CHAPTER III. *General Provisions Relating to Wills.*

CHAPTER I.

Execution and Revocation of Wills.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Title II. of this act, being chargeable in both cases, with the payment of all the decedent's debts, as provided in An Act relating to Procedure of Probate Courts in the settlement of estates.

Who may make a will.

SEC. 3. A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means may be declared void.

Will, or part thereof, procured by fraud.

SEC. 4. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

Separate property of married women.

Who may, take
by will.

SEC. 5. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, but corporations other than those formed for scientific, literary, religious, charitable, benevolent, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Written will,
how to be executed.

SEC. 6. Every will, other than a nuncupative will, must be in writing, and every will other than an olographic and nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself;

2. The subscription must be made in the presence of the attesting witnesses, and be acknowledged by the testator to them to have been made by him;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, in his presence and in the presence of each other.

Definition of
an olographic
will.

SEC. 7. An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this Territory, and need not be witnessed. Such wills may be proven in the same manner as other private writings.

Witness to add
residence.

SEC. 8. A witness to a written will must write, with his name, his place of residence. But a violation of this section does not affect the validity of the will.

Mutual will.

SEC. 9. A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

Competency of
subscribing witnesses.

SEC. 10. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and the allowance of the will, if it is otherwise satisfactorily proved.

Conditional will.

SEC. 11. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

Gifts to subscribing
witnesses
void.

SEC. 12. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto are void, unless there are other two competent subscribing witnesses to the same; but a mere charge on

the estate of the testator for the payment of debts, does not prevent his creditors from being competent witnesses to his will.

Creditors competent witnesses.

SEC. 13. If a witness to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to him.

Witness who is a devisee, who would be entitled to share of estate if no will, entitled to share to amount of devise.

SEC. 14. No will made out of this Territory is valid as a will in this Territory, unless executed according to the provisions of this Chapter.

Will not duly executed, void.

SEC. 15. The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

Republication by codicil.

SEC. 16. A nuncupative will is not required to be in writing, nor to be declared or attended with any formalities.

Nuncupative will, how to be executed.

SEC. 17. To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

Requisites of a valid nuncupative will.

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses, who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect;

3. The decedent must have been at the time in expectation of immediate death from an injury, or casualty happening or occurring within twenty-four hours previous to the making of such nuncupative will.

SEC. 18. No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Proof of nuncupative wills.

SEC. 19. Except in the cases in this Chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

Written wills, how revoked.

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or

destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Evidence of
revocation.

SEC. 20. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

Revocation of
duplicate.

SEC. 21. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Revocation by
subsequent will.

SEC. 22. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but, in other cases, the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Antecedent not
revived by revo-
cation of subse-
quent will.

SEC. 23. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation or revocation, the first will is duly republished.

Revocation by
marriage and
birth of issue.

SEC. 24. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and wife or issue survives him, the will is revoked unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Effect of mar-
riage of a woman
on her will.

SEC. 25. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Contract of sale
not a revocation.

SEC. 26. An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

SEC. 27. A charge or incumbrance upon any estate,

for the purpose of securing the payment of money, or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devises and legacies therein contained must pass, subject to such charge or incumbrance.

Mortgage not a revocation of a will.

SEC. 28. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

Conveyance when not a revocation.

SEC. 29. If the instrument by which an alteration is made, in the testator's interest, in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

When it is a revocation.

SEC. 30. The revocation of a will revokes all its codicils.

Revocation of Codicils.

SEC. 31. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies, leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Afterborn child, unprovided for, to succeed.

SEC. 32. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

Children or issue of children of testator unprovided for by his will.

SEC. 33. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment, and

Share of after-born child, out of what part of estate to be paid.

a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during lifetime of testator.

SEC. 34. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them, in the testator's lifetime, by way of advancement, they take nothing in virtue of the three preceding sections.

Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.

SEC. 35. When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Devises of land, how construed.

SEC. 36. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Will to pass right acquired after the making thereof.

SEC. 37. Any estate, right, or interest in lands acquired by the testator after the making of his will, passes thereby, and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator, to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

CHAPTER II.

Interpretation of Wills.

Testator's intention to be carried out.

SECTION 1. A will is to be constructed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

Intention to be ascertained from the will.

SEC. 2. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will taking in view the circumstances under which it was made, exclusive of his oral declarations.

Rules of interpretation.

SEC. 3. In interpreting a will, subject to the law of this Territory, the rules prescribed by the following sections of this Chapter, are to be observed, unless an intention to the contrary clearly appears.

SEC. 4. Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Several instruments are to be taken together.

SEC. 5. All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable, the latter must prevail.

Harmonizing various parts.

SEC. 6. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

In what case devise not affected

SEC. 7. Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

When ambiguous or doubtful.

SEC. 8. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

Words taken in ordinary sense.

SEC. 9. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Words to receive an operative construction.

SEC. 10. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Intestacy to be avoided.

SEC. 11. Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

Effect of technical words.

SEC. 12. Technical words are not necessary to give effect to any species of disposition by will.

Technical words not necessary.

SEC. 13. The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

Certain words not necessary to pass a fee.

SEC. 14. Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

Power to devise, how executed by terms of will.

SEC. 15. A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real and personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

Devise or bequest of all real or personal property, or both.

SEC. 16. A devise of the residue of the testator's real property passes all the real property which he was en-

Residuary clause.

titled to devise at the time of his death, not otherwise effectually devised by his will.

Same.

SEC. 17. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

"Heirs," "relations," "issue," "descendants," etc.

SEC. 18. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" or "next of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the Title on Succession in this act.

Words of donation and limitation.

SEC. 19. The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

To what time words ref. r.

SEC. 20. Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Devise or bequest to a class.

SEC. 21. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

When conversion takes effect.

SEC. 22. When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

When child born after testator's death takes under will.

SEC. 23. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Mistakes and omissions.

SEC. 24. When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received.

SEC. 25. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

When devises and bequests vest.

SEC. 26. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

When cannot be divested.

SEC. 27. If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in Section 37, Chapter I., of this act.

Death of devisee or legatee.

SEC. 28. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator.

Interests in remainder are not affected.

SEC. 29. A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

Conditional devises or bequests

SEC. 30. A conditional precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

Condition precedent, what.

SEC. 31. Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

Effect of condition precedent.

SEC. 32. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.

Condition precedent, when deemed performed.

SEC. 33. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

Condition subsequent, what.

SEC. 34. A devise or legacy given to more than one person vests in them as owners in common.

Devisees, etc., take as tenants in common.

SEC. 35. Advancements or gifts are not to be taken as adoptions of general legacies, unless such intention is expressed by the testator in writing.

Advancements, when adoptions.

CHAPTER III.

General Provisions.

Nature and designation of legacies.

Specific.

Demonstrative.

Annuities.

Residuary.

General.

Order of sale in case of an intestate.

Order of sale in case of a testator

SECTION 1. Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator;

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy;

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy;

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged;

5. All other legacies are general legacies.

SEC. 2. When a person dies intestate all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this act and the act relating to procedure of probate courts in the settlement of estates.

SEC. 3. The property of a testator, except as otherwise specially provided for in this act and the act relating to procedure of probate courts in the settlement of estates must be resorted to for the payment of debts, in the following order.

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and

5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

SEC. 4. The property of a testator, except as otherwise specially provided in this act and the act relating to procedure of probate courts in the settlement of estates must be resorted to for the payment of legacies, in the following order:

Legacies, how charged with debts.

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed.

SEC. 5. Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.

SEC. 6. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Abatement.

SEC. 7. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the probate court to sell the property devised and bequeathed, in the cases herein provided.

Specific devises and legacies

SEC. 8. The rights of a purchaser or incumbrancer of real property, in good faith and for value derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the recorder of the county where the real property is situated, within four years after the deviser's death.

Heir's conveyance, good unless will is proved within four years

SEC. 9. Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

Possession of legatees.

SEC. 10. In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Bequest of interest.

SEC. 11. A legacy or a gift in contemplation of death, or peril of death, may be satisfied before death.

Satisfaction.

- Legacies, when due. SEC. 12. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.
- Interest. SEC. 13. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.
- Construction of these rules. SEC. 14. The four preceding sections are in all cases to be controlled by a testator's express intention.
- Executor according to the tenor. SEC. 15. Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.
- Power to appoint is invalid. SEC. 16. An authority to an executor to appoint an executor is void.
- Executor not to act until qualified. SEC. 17. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges, and take necessary measures for the preservation of the estate.
- Provisions as to revocations. SEC. 18. The provisions of this Chapter in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.
- Execution and construction of prior wills not affected. SEC. 19. The provisions of this Chapter do not impair the validity of the execution of any will made before it takes effect or affect the construction of any such will.
- The law of what place applies. SEC. 20. The validity and interpretation of wills, wherever made, are governed, when relating to property within this Territory, by the law of this Territory.
- Liability of beneficiaries for testator's obligations. SEC. 21. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the act relating to Procedure of Probate Courts in the settlement of estates.

TITLE II.

SUCCESSION.

SECTION 1. Succession is the coming in of another to take the property of one who dies without disposing of it by will. Succession defined

SEC. 2. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court for the purposes of administration. Who first succeeds to possession of estates not devised.

SEC. 3. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this act and the act relating to procedure of probate courts in the settlement of estates subject to the payment of his debts, in the following manner: Succession to and distribution of property.

1. If the decedent leave a surviving husband or wife, and only one child, or the issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the issue of one or more deceased children; one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the issue of one or more deceased children, then the estate goes in equal shares to children living, or to the child living, and the issue of the deceased child or children by right of representation;

2. If the decedent leave no issue, the estate goes one-half to the surviving husband or wife, and the other to the

decedent's father and mother, in equal shares, and if either be dead, the whole of said half goes to the other. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead, then to the other.

3. If there be neither issue, husband, wife, father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation;

4. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

6. If a decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the decedent be a widow or widower, and leave no kindred, and the estate or any portion thereof was common property of such decedent and his or her deceased spouse, while such a spouse was living, such common property shall go to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the

lawful issue of any deceased brother or sister of such deceased spouse, by right of representation;

9. If the decedent leave no husband, wife, or kindred and there be no heirs to take the estate or any portion thereof, under subdivision 8 of this section the same shall be disposed of in the manner provided in Section 22 of this Title for the disposal of estates of non-resident foreigners.

SEC. 4. Every illegitimate child is an heir of the person who acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Illegitimate children to inherit in certain events.

SEC. 5. If an illegitimate child dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

The mother is successor to illegitimate child.

SEC. 6. The degree of kindred is established by the number of generations, and each generation is called a degree.

Degrees of kindred, how computed.

SEC. 7. The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity, and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

Same.

SEC. 8. The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

Same.

SEC. 9. In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather towards the sons and grandsons.

Same.

SEC. 10. In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Same

SEC. 11. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless

Relatives of the half blood.

the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance.

Advancements constitute part of distributive share.

SEC. 12. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child or other lineal descendant, toward his share of the estate of the decedent.

Advancements, when too much, or not enough.

SEC. 13. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

What are advancements.

SEC. 14. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child or other successor or heir.

Value of advancements, how determined.

SEC. 15. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heir, advanced to, dies before decedent.

SEC. 16. If any child, or other lineal descendant receiving an advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife from each other.

SEC. 17. The provisions of the preceding sections of this Chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Estate goes to the mother; to the father, when.

SEC. 18. If the decedent leave no issue, nor husband nor wife, and the mother be living, the estate goes to the mother. If the decedent leave an estate which came

to him as an advancement from his father, and he be living, such estate goes to the father.

SEC. 19. Inheritance or succession by "right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken in living. Posthumous children are considered as living at the death of their parents.

Inheritance by representation.

SEC. 20. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this Title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Aliens may inherit, when and how.

SEC. 21. When succession is not claimed as provided in the preceding section, the probate court must proceed as provided in Chapter XI. of the "Act relating to Procedure of Probate Courts in the Settlement of Estates."

Succession not claimed, how property must be sold.

SEC. 22. Those who succeed to the property of a decedent are liable for all his obligations in the cases and to the extent prescribed by the Act relating to Procedures of Probate Courts in the Settlement of Estates.

Successor liable for decedent's obligations.

Approved March 13, 1884.

CHAPTER XLV.

OF PRIVATE CORPORATIONS.

AN ACT Compiling and Amending the Laws relating to
Private Corporations.

*Be it enacted by the Governor and Legislative Assembly
of the Territory of Utah:*

CHAPTER I.

Residence of
corporators.

Purposes.

SECTION 1. Hereafter, whenever any number of persons, not less than five, one-third of whom being residents of this Territory, and desirous of associating themselves together for establishing and conducting any mining, manufacturing, commercial, or other industrial pursuit, or the construction or operation of wagon roads, irrigating ditches, or the colonization and improvement of lands, or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, or for any rightful subjects consistent with the Constitution of the United States and the laws of this Territory, and who wish to incorporate for that purpose, may, by complying with the provisions of this act, become a body corporate.

Must enter into
agreement, what
it must contain.

SEC. 2. They shall enter into an agreement in writing, signed by each of them, and by at least three of their number acknowledged before the probate judge of the county in which they have established or intend to establish their principal place of business, stating the precinct or city, and stating the name of the association, their names and places of residence written in full, the time of its duration, which shall not in any case be less than three years nor more than fifty years, the pursuit or business agreed upon, specifying it in general terms, the place of its general business, the amount of stock each party has subscribed, the amount of each share and the limit of capital stock agreed upon, the number and kind of officers for the association, with their qualifications and term of office and the time and manner of their election, removal and resignation, and whether the private property of the stockholders

shall be liable for its obligations or not, with such additional clauses as they deem necessary for the conducting of the business and its future safety and welfare. To this there shall be added the oath or affirmation of three or more of their number to the effect that they have commenced or it is *bona fide* their intention to commence and carry on the business mentioned in the agreement, and that the affiants verily believe that each party to the agreement has paid, or is able to and will pay the amount of his stock subscribed for provided that said acknowledgment shall not be made before the probate judge until ten per cent. of the stock subscribed by each shareholder has been paid in; *Provided*, That where the amount of the capital stock of any corporation which may be formed under the provisions of this act, consists of the aggregate valuation of property, for the working, development, management, use, sale or exchange, of which such corporation shall be formed, no actual subscription in money to the capital stock of such corporation shall be necessary; but each owner of such property shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the fair estimated cash value of so much of said property, the title to which he may, by deed of trust, convey, or may have conveyed, or vested in such corporation; such subscription to be deemed to have been paid in upon the execution and delivery to such corporation of such conveyance or deed of trust; *Provided further*, That this section shall not be so construed as to prohibit the stockholders of any corporation from regulating the mode of making subscriptions to its capital stock, and calling in the same by by-laws or express contract; *And provided further*, That where subscriptions to the capital stock of any company are paid in other than money, the fact shall be so stated, and the kind of property, with a description thereof, specified in the articles of agreement.

Proviso,
Capital stock.

May be part in
property.

Proviso.

Proviso, must
show.

SEC. 3. The agreement, with the oath or affirmation, shall, within ten days from its due execution, be deposited with the probate clerk of the county in which the general business is to be carried on, and shall be by him recorded in a book to be prepared for that purpose and kept in his office, the expenses of which recording shall be paid by the association.

The agreement
must be acknow-
ledged.

SEC. 4. Before the first or any other officers shall enter upon the duties of their respective offices, they shall take and subscribe an oath of office, and enter into bonds

How officers to
qualify.

to the acceptance of the probate judge, that they will discharge the duties of such office to the best of their judgment, and that they will not do nor consent to the doing of any matter or thing relating to the business of the association with intent to defraud any stockholder or creditor or the public. And the oath or affirmation and bonds shall be filed in the office of the county clerk.

Agreement, etc.,
where to be filed

Copy must be
filed in secreta-
ry's office.

Secretary must
issue a certi-
ficate.

Proviso, county
clerk must issue
certificate to re-
ligious, etc.,
corporations.

SEC. 5. So soon as the agreement and oath or affirmation and oath of office and bonds are filed, the clerk of the probate court shall issue under the seal of the court, a certificate to the effect that the agreement and oath or affirmation and oath of office and bonds have been filed in his office, which certificate together with a copy of the articles or agreement and oath or affirmation, certified by the county clerk, must be filed in the office of the Secretary of the Territory who shall issue under the great seal of the Territory a certificate that a copy of the articles or agreement and oath or affirmation, containing the required statement of facts have been filed in his office which shall be sufficient to constitute the association a body corporate with succession as specified in the agreement, which certificate, or a certified copy of the same, shall be evidence of the due incorporation of the association; *Provided*, that corporations formed for religious, social, benevolent, educational or scientific purposes, or corporations formed for the construction and operation of irrigating ditches, or corporations known in this Territory as "co-operative mercantile institutions," shall not be required to file copies of their articles in the office of the Secretary of the Territory, but the county clerk shall issue to such corporations, under the seal of the court a certificate to the effect that the articles or agreement and oath or affirmation have been filed in his office, which certificate shall be evidence of the due incorporation of the same.

Powers of the
corporation

SEC. 6. The corporation in its name shall have power to make contracts, to sue and to be sued, to have a seal, which it may alter at pleasure, to buy, use, and sell or dispose of personal property, to buy, use, sell or dispose of all such real estate as shall be necessary for its general business and such as shall be necessary for the collection of its debts or judgments or decrees in its favor; but it shall not have power to enter into, as a business, the buying and selling of real estate. It may make all such by-laws, rules and regulations, not inconsistent with the laws in force, or which may be in force in this Territory, and not inconsistent with other corporate rights, and vested privileges,

as may be necessary to carry into effect the object of the association; and such by-laws, rules and regulations may be made in a general meeting of the stockholders or by a board of officers elected by them. It may as hereinafter provided increase or diminish its capital stock or dissolve the corporation. The corporate powers of the corporation shall be exercised by the board of directors or trustees, who shall be stockholders in the company, and one-third of them residents of the Territory. A majority of the whole number of directors or trustees shall form a board for the transaction of business, and every decision of a majority of said board shall be valid as a corporate act, and all corporate acts heretofore exercised by the board of directors or trustees of any corporation organized under and by virtue of the laws of Utah Territory, are hereby validated and confirmed.

Directors to
exercise corpor-
ate powers.

Former corpor-
ate acts vali-
dated.

SEC. 7. The capital stock of any corporation now existing, or that hereafter may be organized by or under the laws of this Territory, may be increased by the sale of more shares or by increasing the par value of the shares, or otherwise, to any amount not exceeding twenty millions of dollars; or such capital stock may be diminished by decreasing the par value of shares, the purchase and cancellation of shares, or otherwise, to any amount not less than twenty-five per cent. in excess of the indebtedness of the corporation. The name of such corporation may be altered, the number of its directors, trustees or officers, be changed by making the number greater or less (but in no case shall the number of said trustees, or directors be less than three nor more than thirteen) the articles of agreement or incorporation may be otherwise changed or amended; *Provided*, Such amendment does not alter the original purpose of the incorporation. But no such change shall be made except by a vote representing at least two-thirds of the capital stock, at a stockholders' meeting called for that purpose in the following manner: Notice shall be given by the president or secretary of the board of directors or trustees, of such corporation in some newspaper printed in the English language, and having a general circulation in the county where the corporation has its principal place of business in this Territory for at least twenty-one days, stating the nature of the proposed change or amendment and the time and place of such meeting; such change or amendment, when adopted shall be signed by the president and secretary of such corporation and be filed and recorded by the same officer as were the original articles of incorporation,

Capital stock
may be increased
or decreased.

Notice.

Corporations
may consolidate.

and a copy thereof duly certified shall be evidence as provided in Section 17 of this act. Where two or more corporations organized under this act shall desire to unite and consolidate, it shall be lawful for them so to unite and consolidate; *Provided*, That at a regular meeting of said corporations, two-thirds of the stockholders thereof shall by vote determine to so unite and consolidate; *Provided further*, That notice of the meetings of such several corporations for such purpose shall be called, by notice published in some newspaper published at Salt Lake City for at least thirty days before such meeting shall be held.

Notice.

Corporations
may be dis-
solved.

SEC. 8. Any corporation formed under this act, may dissolve and disincorporate itself by its officers presenting to the probate judge of the county in which the principal office of the company is located, a statement setting forth that at a meeting of the stockholders called for that purpose, it was decided by a two-thirds vote of all the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application and shall specify the time and place at which it is to be heard, and shall be published in some newspaper having general circulation in the Territory, once a week for one month. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, said judge shall proceed to consider the application, and if satisfied that the corporation has taken the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Corporation
be dissolved its
affairs may be
adjusted.

SEC. 9. Whenever the corporation shall be dissolved, if there shall be debts or claims due to it, or debts or obligations against it, or assets, real or personal, not converted into money for distribution, the corporate powers shall be continued for the purpose of collecting the debts or claims due, and paying its debts or obligations and selling and converting its assets into money and distributing the same among the stockholders; and if no sufficient means of effecting the object and intent of this section be provided in the agreement or by-laws, the court shall have power on the application of any person interested, to make all needful rules and orders and judgments necessary to carry the provisions of this section into effect.

Corporation has
lien.

SEC. 10. The corporation shall collect of the stockholders the amount of stock by them subscribed, in such installments and at such times as shall be settled by the

agreement or by-laws. It shall have a lien on the amount paid in and the dividends thereon for any balance due for the stock of a delinquent stockholder.

SEC. 11. The officers, after being fully qualified to act, may continue to act, unless removed for misconduct, until their successors are qualified.

Officers to act until their successors are qualified.

SEC. 12. If, from any cause, the officers shall not be elected at the time provided in the agreement or by-laws, such election may be made at such other time as the officers and directors may appoint. If such appointment be not made within three months, then at the call of any six stockholders.

If officers qualify they may continue to act, etc.

SEC. 13. It shall be the duty of the corporation to keep true and correct books of its proceedings and business.

Corporation to keep correct books.

SEC. 14. The stock shall be deemed personal property, and may be transferred in such manner as may be provided in the agreement or by-laws.

Stock, personal property, transferable.

SEC. 15. If the secretary, clerk, or other person having the charge of keeping the books of the corporation, or any other person whose duty it is to make entries in such books, shall wilfully omit to make the proper entries, or shall knowingly and wilfully make any false and fictitious entries therein, with intent to deceive or defraud the corporation or any stockholder, creditor or other person, he and his counselors, advisers, aiders and abettors shall be deemed guilty of forgery, and shall be punished as provided by law for the punishment of the crime of forgery.

Fraudulent practices punished.

SEC. 16. If any officer, director, employe, or other person having the charge or management of any money or other property of the corporation, or to whom any such money or other property shall be entrusted for any purpose whatever, shall fraudulently misapply, carry away, secrete, conceal or convert to his own use any such money or other property with intent to defraud such corporation, or any stockholder, creditors or other person, he, his counselors, aiders and abettors shall be deemed guilty of embezzlement, and shall be punished as provided by law for the punishment of embezzlement.

Same.

SEC. 17. It shall be the duty of the clerk, with whom the records in this act mentioned are kept, at the request of any person interested therein, or who needs the same for evidence, on being paid his fees therefor, to give a transcript of such record under the seal of said court, and the duty of the Secretary of the Territory in like manner to give a transcript under the great seal of the Territory, of

Certificate of Clerk.

the papers filed in his office, which transcript shall be conclusive evidence of such record and *prima facie* evidence of the facts therein stated.

Non-user.

SEC. 18. Non-use for two years of the franchise herein given, or non-compliance with any of the provisions of this act, shall be a forfeiture of the privileges shall herein be granted.

Meeting, votes,
etc.

SEC. 19. Whenever a meeting of the stockholders, other than stated meetings shall be necessary, notice shall be given in such manner as may be prescribed in the agreement or by-laws. At all meetings each shareholder shall be entitled to one vote for each share of stock which he or she may have in his or her own right, or any, held by him or her in trust for others, as administrator, executor or guardian, and such votes may be given in person or by an authorized agent or proxy.

Liability of
stockholders.

SEC. 20. If the agreement mentioned in Section 2 of this act, provide that the individual property of the stockholders shall be liable for the corporate obligations, then such property shall be deemed and taken to be so liable; if it provide that such individual property shall not be liable, then it shall be deemed and taken to be not liable; *Provided*, That the joint property of the association and the unpaid stock shall be liable for the debts of the association.

Right to modify
or repeal re-
served.

SEC. 21. The Governor and Legislative Assembly may hereafter modify or repeal this act; but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in Section 9 of the act to which this is an amendment.

How religious,
etc., asso-
ciations may
incorporate.

SEC. 22. Religious, social, benevolent, scientific and other corporations included in Section 1 of this act when pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association or institution, elect directors, the number thereof to be not less than three nor more than thirteen, and may incorporate themselves as provided in this act.

What steps nec-
essary to incor-
porate religious,
etc., corpora-
tions.

SEC. 23. Instead of the requirements provided for incorporating associations in Section 2 of this act pertaining to subscription of capital stock, or the payment thereof, it shall be sufficient for associations mentioned in the preceding section, if the articles of agreement or incorporation set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such re-

ligious, social, scientific, or benevolent association, or branch thereof, were present at such election and signed the articles of agreement and the result thereof; to be verified by the officers conducting such election. Said directors or other officers shall qualify and continue in office as provided in the articles of agreement or by-laws consistent with this act.

SEC. 24. Corporations referred to in the two preceding sections may hold all the property of the association, or members thereof, owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association; *Provided*, That incorporated associations of Masons, Odd Fellows, endowed institutions of learning, or other associations, under the provisions of this act, may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith. The directors must annually make a full report of all property, real and personal, held in trust for their corporation by them, and of the condition thereof to the members of the association for which they are acting.

Such corporations may own or hold real estate.

Directors must make annual report.

SEC. 25. Corporations organized by members of associations mentioned in Section 22 of this act, may, when necessary for their good, mortgage or sell their real or personal property; *Provided*, That such mortgage or sale must be authorized by a two-thirds' majority vote of its members present at a duly called meeting for that purpose. Such sale may be made by the directors of such corporation and the proceeds thereof used as may be provided by the by-laws thereof.

Such corporations may mortgage or sell their real or personal property.

SEC. 26. All associations incorporated, or purported to be incorporated under the laws of this Territory, which have heretofore filed, acknowledged, verified and recorded their articles of agreement, or incorporation, in any county of the Territory, shall be established and confirmed as corporations from the time of the organization thereof, as fully as if said articles were acknowledged, verified, filed and recorded in the county of the principal place of business of said incorporation, upon the filing by such incorporation of certified copies of its articles and certificate of incorporation with the Secretary of the Territory, and with the clerk of the county court of the county of this Territory in which its principal office or place of business is situated.

Method of validating defective organizations.

Foreign corporation must file articles in secretary's office, and office of probate judge.

Must designate person on whom process may be served.

Penalty.

SEC. 27. All corporations not organized under the laws of Utah now doing business in this Territory, shall within sixty days after the passage of this act, and all other foreign corporations within sixty days after commencing business in this Territory, file with the Secretary of the Territory and with the probate judge of the county wherein their principal office in this Territory is situated, certified copies of their articles and certificate of incorporation and by-laws, and in case of alteration and amendment of said articles or by-laws thereafter, shall file certified copies of such alteration or amendment with each of said officers, within thirty days after their adoption. Such corporation shall also within sixty days after commencing business in this Territory, designate some person residing in the county in which its principal place of business in this Territory is situated, upon whom process issued by authority or under any law of the Territory, may be served, and shall file such designation with the probate judge of said county, and with the Secretary of the Territory; and a copy of such designation duly certified by either of said officers, shall be evidence of such appointment, and it shall be lawful to serve on such person so designated any process issued as aforesaid, and such service shall be deemed to be valid service thereof. Any such corporation failing to comply with the provisions of this section, shall not be entitled to the benefits of the laws of this Territory, limiting the time for the commencement of civil actions.

CHAPTER II.

How telegraph companies may be organized.

SEC. 1. Any number of persons, not less than three, two-thirds of whom must be residents of this Territory, may associate and form a company for the purpose of constructing, owning, holding and working a line or lines of telegraph in this Territory, upon the terms and conditions and subject to the liabilities prescribed in this act.

SEC. 2. Such persons under their hands shall make a certificate which shall specify:

What certificate of organization must specify.

1. The corporate name of the company.
2. The general route of the principal line or lines of telegraph, designating the principal points to be connected thereby.
3. The amount of the capital stock of the company, and the number of shares into which the same shall be divided.

4. The names and places of residence of the principal shareholders, and the number of shares subscribed for by each. 5. The period of existence of said company, not to exceed fifty years. Which certificate shall be proved or acknowledged and filed in the office of the county clerk of the county in which one of the principal offices of said company shall be established, and a copy certified by the county clerk filed in the office of the Secretary of the Territory, who shall issue to such corporation under the great seal of the Territory a certificate of incorporation.

SEC. 3. Upon the issue of the certificate of incorporation, such body shall become a body corporate by the name designated in said certificate, and shall be entitled to all the rights and privileges and subject to the liabilities common to corporations; and a copy of said certificate certified to by the county clerk, or the certificate of incorporation or a certified copy thereof, under the hand of the Secretary of the Territory, with the seal of State attached may be used as evidence in all courts and places.

Where to be
filed.

Secretary of
Territory must
issue certificate.

SEC. 4. Such company shall have power to purchase, take, receive, hold, use and vend to others to be used any patent or patents for telegraphing, and any and all rights thereunder; to purchase, take, receive, hold and maintain any and all rights, privileges and franchises relating to the business of telegraphing; to make, receive by assignment, or ratify by contract or agreement for the building, maintaining, controlling, or working of any line or lines of telegraph; to construct, purchase, lease, take, receive, hold, control and work any lines for telegraphing within the Territory of Utah; and to purchase, take, lease, hold, own, use and occupy any personal or real estate, rights, property telegraph lines, grants, franchises and privileges, that may be proper or convenient for the complete transaction of its business, or for effectually and conveniently carrying out the objects and purposes of said company. It shall also have power to appoint such directors, officers and agents, and to make such rules, regulations and by-laws as may be necessary or proper in the transaction of its business, and not inconsistent with the laws of this Territory or of the United States.

Powers of
company.

SEC. 5. Such company is authorized to construct lines of telegraph along and upon any road or highway, or across any of the waters or over any lands within the limits of this Territory, by the erection of the necessary fixtures, including posts, piers or abutments, and the appropriation of any standing trees, except fruit and ornamental

Where auth-
orized to construc
lines of tele-
graph.

trees and trees within enclosures, for sustaining the wires of said lines; *Provided*, The same shall not be so constructed as to incommode the public use of said road or highway or injuriously interrupt the navigation of said waters.

SEC. 6. If any person over whose lands said lines shall pass, upon which posts, piers or abutments shall be placed, or standing trees appropriated, shall consider himself aggrieved or damaged thereby, it shall be the duty of the probate court of the county within which such lands are, on the application of such person and on notice of such application being served on the president or any director of such company, to appoint three discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and it shall be the duty of said commissioners or a majority of them to make a just and equitable appraisal of all the loss or damage sustained by said applicant by reason of said lines, posts, piers, or abutments, or appropriation of standing trees, duplicates of which said appraisement shall be reduced to writing and signed by said commissioners or a majority of them; one copy shall be delivered to the applicant and the other to the president or any director or officer of said company or corporation, on demand; and in case any damage shall be adjudged to said applicant, the company or corporation shall pay the amount thereof, with the costs of said appraisal, said costs to be set forth and liquidated with the damages appraised; and said commissioners shall receive for their services such compensation as the probate judge may award, to be paid in like manner as the costs and damages appraised. But in no case shall the person feeling himself aggrieved or injured be entitled to any damage, when application is not made to the probate court within six months after the erection of said telegraph lines across the lands of such persons.

SEC. 7. Any telegraph company may at any time, with the consent of the persons holding two-thirds of the issued stock of said company, sell, lease, assign, transfer and convey any rights, privileges, franchises and property of said company.

SEC. 8. This act shall not be construed to limit or impair any rights of the California State Telegraph Company.

SEC. 9. All operators, clerks and persons in the

Commissioners
to assess dam-
ages; oath of,
compensation.

May lease or
sell and convey
their franchise
and property.

Limitation on
former sections.

employ of any telegraph company, whilst employed in the offices of said company, or along the route of its telegraph lines, shall be exempt from military duty and from serving on juries.

Operators, etc., exempt from military and jury duty.

SEC. 10. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing.

Contracts made by telegraph to be deemed contracts in writing.

SEC. 11. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph; *Provided*, That the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice.

Notice may be given by telegraph; *proviso*, such notice deemed actual notice.

SEC. 12. Any power of attorney or other instrument in writing duly proved, or acknowledged and certified so as to be entitled to record, may, together with the certificate of its proof or acknowledgment, be sent by telegraph; and the telegraphic copy or duplicate thereof shall, *prima facie*, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original.

Contents of instruments in writing may be sent by telegraph; force and effect of.

SEC. 13. Checks, due bills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money or other thing of value, may be made or drawn by telegraph; and when so made or drawn shall have the same force and effect to charge the maker, drawer, indorser, or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer, endorsee, acceptor, holder or bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the maker or drawer thereof, to cause any such instrument to be sent by telegraph so as to charge any person thereby, except as hereinafter in the next section otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same to prove the existence and execution of the original writing from which the telegraphic copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent.

Checks, etc., may be made or drawn by telegraph; force and effect of.

When genuineness of denied on oath, party claiming must prove original.

Original message to be preserved.

SEC. 14. Except as hereinbefore otherwise provided,

Contents of certain instruments sent by telegraph may be *prima facie* evidence; burden of proof.

any instrument in writing, duly certified under his hand and official seal by a notary public, commissioner of deeds, or a clerk of a court of record, to be genuine within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph; and the telegraphic copy thereof shall, *prima facie* only, have the same force, effect and validity, in all respects whatsoever, as the original; and the burden of proof shall rest with the party denying the genuineness or due execution of the original.

Contents of warrant of arrest may be sent by telegraph.

SEC. 15. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any district, county, or probate court may endorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman; and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority and be under the same obligation to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest with the proper direction for the service duly endorsed thereon had been placed in his hands; and the said telegraphic copy shall be entitled to full faith and credit and have the same force and effect in all courts and places as the original. But prior to indictment or conviction, no such order shall be made by any officer unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged; *Provided*, The making of such order by any officer, as aforesaid, shall be *prima facie* evidence of the regularity thereof, and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent; and in telegraphing the same the original or the said certified copy may be used.

Authority of officers to make arrests on receipt of telegraphic copy.

Original warrant and order to be preserved.

Writ or order in civil cases may be transmitted by telegraph.

SEC. 16. Any writ or order in any civil suit or proceeding and all other papers requiring service may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respects as the original thereof might be if delivered to him; and the officer or person

serving or executing the same shall have the same authority and be subject to the same liabilities as if the said copy were the original. The original, when a writ or order shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose.

Original or certified copy may be used by operator.

SEC. 17. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S.," or by the word "Seal."

When document bears a seal.

SEC. 18. The president or secretary of any telegraph company doing business in this Territory may file in the office of the county clerk of the county in which the principal office of said company within this Territory is situated, and the office of the Secretary of this Territory, a copy of any printed blank or envelope, picture or device, used or intended so to be, by said company, with his certificate that the same is commonly used, or is intended so to be, in the business of said company as a distinguishing mark, notice or index of said business, and thereupon such blank, envelope, picture or device shall become the property of said company; and it shall not be lawful for any person, unless by the employment or permission of said company, to print, publish, distribute or use, or cause to be printed, published, distributed or used, either of them, or any copy, counterfeit, similitude or imitation thereof. Any person wilfully offending against the provisions of this section may be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months.

Company may have a distinguishing mark in their business.

SEC. 19. It shall be the duty of any telegraph company doing business in this Territory to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit by the person or persons whose dispatch is postponed out of its order; *Provided*, That communications to and from public officers on official business may have precedence over all other communications; *And provided also*, That intelligence of general and public interest may be transmitted for publication out of its order.

Messages must be sent in the order in which they are received.

Provido, as to public business.

SEC. 20. The term "telegraphic copy" or "telegraphic duplicate," wherever used in this act, shall be construed to mean any copy of a message made or prepared

"Telegraphic copy" and "telegraphic duplicate" defined.

for delivery at the office to which said message may have been sent by telegraph.

Confirming certain rights upon California State Telegraph Co.

SEC. 21. The California State Telegraph Company, a company formed within the State of California, and having its principal office in the city of San Francisco and doing business within the Territory of Utah, is hereby declared to be duly incorporated under its present corporate name, style and organization; and the right is hereby granted to said company to acquire, own and enjoy, and to dispose of any and all property real and personal, franchises and privileges as may be proper or convenient for the transaction of its business and for effectually carrying out the objects and purposes of said company, as fully and completely as if said company had been originally formed and duly incorporated under the laws of this Territory, hereby conferring upon said company as ample power to do and transact business and maintain its rights in all courts and places as is or may be possessed by domestic corporations or natural persons.

CHAPTER III.

Railroad Corporations.

How company may be formed.

SECTION 1. Any number of persons, not less than ten, two-thirds of whom shall be residents of the Territory, being subscribers to the stock of any contemplated railroad company, may be formed into a corporation for the purpose of constructing, owning and maintaining such railroad, by complying with the following requirements:

Amount of capital stock necessary to be subscribed.

SEC. 2. That whenever stock to the amount of at least one thousand dollars for each and every mile of the proposed railroad shall have been subscribed, and ten per cent. in cash paid thereon, to a treasurer appointed by said subscribers from among their number, then the said subscribers, either in person or by proxy after having received at least five days' notice from said treasurer of a meeting for that purpose may meet and adopt articles of association, and may elect from among their number not less than five, nor more than thirteen directors.

What the articles of association must contain.

SEC. 3. The said articles of association shall set forth the name of the incorporation, the number of years the same is to continue in existence, not exceeding fifty; the amount of capital stock of the company, which shall be divided into shares of not more than one hundred

dollars each; the actual contemplated cost of constructing the road together with the cost of right of way, mode of power, and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers; the names and number of the directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company; the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be.

SEC. 4. Each stockholder shall personally subscribe to such articles of association his name, place of residence, and the number of shares of stock taken by him in such company; *Provided*, That in case a person having duly paid the ten per cent. required upon his subscription, may sign the same by written proxy, or power of attorney to to that effect; and there shall be endorsed or attached to the said articles so subscribed, an affidavit made by any of the directors named therein, setting forth in substance, the said amount of stock has been subscribed, and that ten per cent. in cash thereon has been paid in as aforesaid; and that the subscribers to said articles are personally known to them.

Subscribers to stock to subscribe name, residence, number of shares, proviso.

SEC. 5. Articles of association formed in pursuance of the provisions of the foregoing section shall be filed in the office of the auditor of public accounts of this Territory, and a certified copy from the auditor shall be filed with the Secretary of the Territory, who shall issue to such corporation, under the great seal of the Territory a certificate of incorporation; and thereupon the persons who have subscribed the same and all persons who may from time to time become stockholders in such company shall be a body politic and corporate, by the name stated in such articles of association; and shall be capable in law to make contracts, acquire real and personal property; to purchase, hold and convey any real and personal property whatever, necessary for the construction, completion and maintenance of such railroad; and for erection of all necessary buildings and yards, or places and appurtenances for the use of the same; and be capable of suing and being sued, and may have a common or corporate seal and make and alter the same at pleasure and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of

Where articles to be filed.

Secretary of Territory must issue a certificate.

Corporate powers of association.

Certified copy of articles and certificate to be evidence of incorporation.

Directors to meet and organize. Certain officers to be elected.

Term of office.

Books of subscription to be opened.

Notice.

Meeting to choose directors; when held; notice to be given.

any articles of association filed in pursuance of this act and certified to be a copy by the auditor of public accounts, the certificate of incorporation or a certified copy thereof under the hand of the Secretary of the Territory with the seal of State attached shall, in all courts and places, be evidence of the incorporation of such company, and of the facts stated therein.

SEC. 6. The directors named in said articles of association, shall meet and organize as a board within twenty days after having received notice of their election, given by the treasurer named and designated in the second section of this act; and at the first meeting of the board, after each election of directors, they shall elect from among their number, a president and vice-president, and from the stockholders a secretary and treasurer, who may hold office during the pleasure of the board, or until their successors have been elected and qualified; the secretary and treasurer, before entering upon their duties, shall each give a bond with such security as may be prescribed by the board of directors, which shall be filed with the auditor of public accounts; the temporary treasurer, required by the second section of this act, shall pay over all moneys received by him as such treasurer, to the treasurer elected by the board of directors, as soon as the latter has been qualified.

SEC. 7. The board of directors, when deemed necessary, shall open books of subscription to the capital stock of the company, and authorize such persons to superintend the taking of said subscription at such times and places and upon such terms as they may direct, due notice of which shall be given; but no subscription of stock shall be binding on the company or parties so subscribing, until the same shall have been accepted and approved by a resolution of the board; in case a greater amount of acceptable stock shall be subscribed than the whole capital required by such company, the board of directors shall distribute the same as equally as possible among the subscribers; but no shares thereof shall be divided in making said distribution.

SEC. 8. There shall be, after the first election of directors as prescribed in the foregoing, annual meetings of the stockholders, held in one of the counties in which, or through which, such road is proposed to be or may have been constructed, for the election of directors to serve for the ensuing year, notice of which, appointing a time and place, shall be given as prescribed by the by-laws of the company, or by resolution of the board of directors, which

notice shall be published not less than twenty days previous thereto, in some newspaper having a general circulation in the Territory; directors shall be elected from time to time, as the by-laws shall designate, or as may be determined in the formation of articles of association, and shall be chosen by ballot and by a majority vote of the stockholders, being present in person or by written proxy, and every such stockholder shall be entitled to one vote for every share of stock which he may have owned for ten days next preceding such election; the directors may hold office for one year and until their successors are elected and qualified.

Number of; how chosen; term of office.

SEC. 9. Meetings of the stockholders may be called at any time during the interval between the annual meetings, by the directors or by any number of stockholders owning not less than one-third of the stock, by giving thirty days' public notice of the time and place of the meeting in the manner prescribed in the next preceding section for annual meetings; when any such meeting is called by the stockholders the object of the meeting shall be stated in such notice, and no business shall be transacted at such meeting except such as shall be so stated in the notice; if at any such meeting so called a majority in value of the stockholders are not represented in person or by written proxy, said meeting shall be adjourned from day to day, not exceeding three days without the transaction of any business; and if within said three days stockholders having at least a majority in interest of the stock do not attend in person or by proxy, and participate in such meeting, then the meeting shall be dissolved. At any annual meeting of the stockholders, and at any meeting held in pursuance of the provisions of this section, and at which not less than three-fourths of the capital stock is represented in person or by proxy, the stockholders present in person or by proxy may by the affirmative vote of the holders of not less than two-thirds of the whole capital stock issued so amend the articles of association of the company as to include new lines of route, alter the route, and change the termini of its railroad; and may increase or reduce the number of directors of such company, to any number not less than five nor more than thirteen, and may increase or diminish the amount of capital stock. Such amendments shall be signed by the president of the company, and the secretary of the company shall certify thereon under his hand and the corporate seal of the company, the fact of their adoption, and the time, place and by whom they were adopted, and thereupon they shall be filed with the auditora

Special meetings of stockholders. Notice of, how given, what to contain.

What business to be transacted.

Proceedings when majority do not attend.

Articles of association may be amended so as to alter route, etc.

of public accounts and with the Secretary of the Territory, who shall attach them to the original articles on file in their respective offices, and the said amendments shall, from the time of being so filed, constitute a part of the articles of association of the company, and thereafter so much of the original articles as conflict with such amendments shall be null and void. A certified copy of such amendments, made by the auditor of public accounts or the Secretary of the Territory, shall be evidence in all courts and places, of the adoption thereof, and of the facts therein stated.

Certain officers
may be removed
by stockholders.

SEC. 10. At all general meetings of the stockholders, when two-thirds of the capital stock interest is present either in person or by written proxy, they may remove any president, vice-president or director of such company and elect others in their stead; *Provided*, Notice of such intended removal shall have been given as required in the preceding sections.

Proceedings in
case directors
not elected on
day designated
by by-laws.

SEC. 11. In case it shall happen at any time, that an election of directors shall not be made on the day designated by the by-laws of the company, said company, for that reason, shall not be dissolved, if within one year thereafter they shall hold an election for directors in such manner as shall be provided by the by-laws; the directors may appoint all subordinate officers not provided in this act, who need not necessarily be stockholders; the said officers may be chosen at such times and for such terms as the directors may prescribe, who may also fix the compensation of each, and require them to give security for the faithful discharge of their respective duties as may be established by the by-laws of the company; any such officers may be removed at the pleasure of the board of directors and their places filled for the remainder of the term, and the said directors shall have power to fill all vacancies in the board, of all officers of the company occasioned by death, resignation, or otherwise.

Power of the
board of direc-
tors.

SEC. 12. The directors of any railroad company organized under this act shall, for and in behalf of such company, make and execute all contracts of whatever nature and kind; and may fully and completely carry out the objects and purposes of such corporation, in such way and manner as they may think proper, and exercise generally the corporate powers of such company; and such directors shall also have full power to make such by-laws as they may think proper for the transfer of stock, and management of the property and business of the company, and for prescribing the duties of officers, artificers and em-

ployees, and for the appointment of all officers, and all else that by them may be deemed needful and proper, within the scope and power of said company; *Provided*, That such by-laws be not disapproved by the stockholders, and be not inconsistent or in conflict with the laws of this Territory, or of the United States.

SEC. 13. The directors shall cause a book to be kept, called record of corporation debts, in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the company, the amount thereof, and to whom due; which book shall, during all office hours, be open to the inspection of any stockholder or party interested.

Directors to cause records to be kept. Duties of Secretary.

SEC. 14. The secretary shall keep in a book provided for that purpose, a correct copy of the proceedings at each meeting of the company, as well as of the board of directors; such record showing the name of each director present at each meeting of the board, and the name of each director voting against any proposition, whenever said director may require the same placed on record. Prior to the adjournment of each meeting of the company or board of directors, the record of such meeting shall be read and approved. The secretary shall also keep such other books as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the company shall be plainly and accurately kept, one of which shall be labeled book of stockholders, containing the names of all persons, alphabetically arranged, who are, or shall have been stockholders in said company, showing their places of residence if known, the number of shares of stock held by them respectively, the time when they became owners of such shares, and amount of cash paid to the company by them respectively, as also the time when they may have ceased to be stockholders; which book, during the office hours of said secretary, shall be open for the inspection of stockholders and creditors of the company, or their personal representatives. The secretary shall also keep a transfer book, in which all transfers of stock shall be duly entered, and no transfer of stock of such company shall be valid, until it shall have been entered therein; by an entry showing to and by whom transferred; the numbers and designation of the shares, the date of transfer, and duly attested by said secretary and approved by the directors.

Secretary to keep record of meetings of company and board of directors.

Shall keep transfer book, what to be entered therein.

SEC. 15. The stock of such company shall be deemed personal estate, shall be transferred in the manner provided in the preceding section, and upon the books of

Stock to be personal estate and transferable.

Shares not transferable until previous call and assessments paid.

the company, upon proper assignment and delivery, to the assignee, of the certificates of stock; but no share shall be transferable till all the previous calls or assessments thereon have been fully paid in; any shareholder transferring his stock in the manner aforesaid, and the same being approved by the board of directors, shall, from and after the date of such approval, cease to be a stockholder in such company, and shall not be liable to any future calls from the directors nor for any debts of the company thereafter.

Directors may require payments of stock. Notice to be given.

SEC. 16. The directors of such company may call in and demand from stockholders the sums by them subscribed, in equal installments of not more than ten per cent. per month, unless otherwise stipulated in the articles of subscription, at such times as they may deem proper; notice of which shall be given to the stockholders personally, or shall be published once a week, for at least four weeks, in a newspaper having a general circulation in this Territory; if, after such notice has been given, any stockholder shall fail in the payment of the assessment made upon shares held by him, so many of such shares as may be necessary for the payment of the assessment on all the shares held by him, may be sold at public auction, to the highest bidder.

How payment enforced

President and Secretary must sign certificates of stock.

SEC. 17. Certificates of stock shall be issued signed by the president and secretary in such manner and upon such terms as the by-laws of the company may prescribe.

Certificate to be made when stock all paid in; when to be filed.

SEC. 18. The president, secretary, and at least a majority of the directors, within thirty days after the payment of the last installment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of capital, so fixed and paid in, which certificate shall be sworn to and subscribed by them, and filed in the office of the auditor of public accounts.

Powers and liability of corporation.

SEC. 19. Every company incorporated under this act, or constructing or operating railways in this Territory, shall have power to cause such surveys for the proposed railroad to be made as may be necessary for the selection of the most advantageous route, and for such purposes their officers, agents and employees may enter upon the lands or waters of any person; subject to responsibility for all damages that may accrue; and may receive, hold, take and convey, by deed or otherwise, such voluntary grants and donations of real estate and other property of every description, as may be made to it, to aid and encourage the construction, maintenance and accommodation of such railroad; to purchase, and by voluntary grants and donations, receive and

take, and by its officers, engineers, surveyors and agents, enter upon and take possession of and hold and use in any manner they may deem proper, all such real estate and personal property as the directors may deem necessary for the construction and maintenance of such railroad stations, depots and other accommodations; and may lay out its road or roads, not exceeding nine rods wide, and construct and maintain the same, with a single or double track, with such appendages as may be deemed necessary for the convenient use of the same; and for the purposes of making embankments, excavations, ditches, drains, culverts, or for procuring timber, stone and gravel, or other materials, may take as much more land wherever they think proper, as may be necessary for the purposes aforesaid, in the manner hereinafter provided; and may construct their road along, across or upon any stream of water, water course, lake, roadstead, street, avenue, highway, or across any railway, canal, ditch or flume, which the route of its road shall intersect, in such manner as to afford security for life and property, but said company shall restore the stream, or water course, road, street, avenue, highway, railroad, canal, ditch or flume, thus intersected, to its former state, as near as may be, or in a sufficient manner not to have necessarily impaired its usefulness, or injured its franchises; and may cross, intersect, join and unite its railroad with any other railroad either before or after construction, at any point upon its route, and upon the grounds of such other railroad company with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every company whose railroad is, or shall be hereafter intersected by any new railroad, shall unite with the owners thereof in forming such intersections and connections, and grant the facilities aforesaid; and if the two companies cannot agree upon the amount of compensation to be made therefor, or the points or manner of such crossings, intersections and connections, the same shall be ascertained and determined by commissioners as hereinafter provided; *Provided*, That no railroad corporation must use any street, alley, or highway, or any of the land or water within any city, town or other municipal corporation unless the right to use the same is granted by a majority vote of the town, city or municipal authorities from which the right must emanate, and the county court of the respective counties of this Territory shall have power to designate at least one road eight rods wide in each county, on which no railroad shall ever be run; *Provided*, This section shall not be so con-

strued to prevent railroads from crossing, as near as may be at right angles, any street or road across which its designated lines may pass.

To transport persons and property, to erect depots and fixtures.

SEC. 20. The said company shall have power to take, transport, carry and convey persons and property on their railroad by the force and power of steam or of animals, or of any mechanical power, or by any combination of them, and may receive tolls or compensation therefor; to erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of passengers, freight and business, and obtain and hold the lands and other property necessary therefor; to regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, within the limits that may be prescribed by law; to regulate the force and speed of their locomotives, cars or other machinery used and employed on their road, and to establish, execute and enforce all needful rules and regulations usual and proper for railroad companies.

To regulate transportation and compensation therefor.

How to acquire rights when unable to agree for purchase.

SEC. 21. If any such company cannot contract for the purchase of any real estate, or any right, title or interest therein, necessary for any of the purposes aforesaid, from the person or persons owning the same, then such company may acquire a title to the same for the purposes herein expressed, by means of the special proceedings prescribed in this act.

Petitions to probate or district court therefor.

SEC. 22. Said special proceedings shall be conducted substantially as follows: The said company shall file in the clerk's office of the probate, or district court of the county or district in which said real estate is situated, a petition verified according to law, stating therein the name of the company, the time when it was incorporated, that it still continues in legal existence, the principal termini of the proposed railroad, the description by metes and bounds, or by some accurate designation of the tract or tracts of land which said company desire to appropriate for the purposes mentioned in this act; that said tract or tracts of land are necessary for said purposes, that the line of said railroad has been surveyed and a map thereof made (a copy of which shall be filed with said petition), that said line has been adopted as the route for said railroad, together with the names of the persons in possession of said tract or tracts of land, and of those claiming any right, title or interest therein, as far as the same can be ascertained by reasonable diligence.

Form and requisites of petition.

SEC. 23. The persons in occupation of said tract or tracts of land, and those having any right, title or interest therein, whether named in the petition or not, shall be defendants thereto, and may appear and show cause against the same, and may appear and be heard before the commissioners herein provided for, and in proceedings subsequent thereto, in the same manner as if they had appeared and answered said petition.

Who defendants in the proceedings

SEC. 24. The said court shall, by order, appoint a time for the hearing of said petition; and the said company shall cause all the occupants and owners of said tract or tracts of land, as far as the same can be ascertained by reasonable diligence, to be personally notified of the pending of said petition, at least ten days before the hearing thereof; and if any of said owners are unknown, or do not reside in this Territory, the company shall cause a notice, stating the filing of said petition, the object thereof, the tract or tracts of land sought to be appropriated, and the time and place of the hearing of said petition, to be published for four successive weeks previous to the time of hearing, in a newspaper having a general circulation in this Territory.

Court to appoint time for hearing the petition; upon whom company to serve notice.

How service to be made if person unknown, or resides out of the Territory.

SEC. 25. The defendants to said petition may appear and show cause against the same, on or before the time set for the hearing thereof, or such other time as the hearing may be continued to; and upon satisfactory proof being made that the defendants have been duly notified of the pending of said petition as herein prescribed, the said court, if it shall be satisfied that the lands or any part thereof are necessary for any of the purposes mentioned in said petition, shall appoint three competent and disinterested persons as commissioners, to ascertain and assess the compensation to be paid to the person or persons having or holding any right, title or interest in, or to each of said tracts of land, for and in consideration of the appropriations of such lands to the use of said company.

Defendant to said petition may show cause.

Court may appoint three commissioners.

SEC. 26. The said court shall appoint the time and place for the first meeting of said commissioners and the time for filing of their reports, and may give such further time as may be necessary for that purpose, if they shall not then have completed their duties.

Court to appoint time and place of first meeting of commissioners.

SEC. 27. The said commissioners shall meet at the time and place ordered, and before entering upon their duties shall be duly sworn by any person authorized to administer oaths, to honestly, faithfully and impartially perform the duties imposed upon them; said commissioners

Commissioners to take official oath; their powers and duties.

may issue subpoenas for witnesses for either party; may administer oaths and may adjourn from place to place, and from time to time, as may be necessary for the proper discharge of their duties.

To view premises and hear proofs.

SEC. 28. The said commissioners shall proceed to view the several tracts of land as ordered by said court, and shall hear the allegations and proof of said parties, and shall ascertain and assess the compensation for such land, to be paid by the said company to the person or persons having, or holding any right, title or interest in, or to the same; and in ascertaining and assessing such compensation they shall take into consideration and make allowance for any benefit or advantage that in their opinion will accrue to such person or persons, by reason of the construction of the railroad as proposed by said company; and they shall, on or before the time as ordered by said court, file in the said clerk's office, their report, signed by them, setting forth their proceedings in the premises.

To make report.

Parties dissatisfied may move court to set aside report, etc.

SEC. 29. The said company, or any of the said defendants being dissatisfied with the decision of the commissioners may, within twenty days after the filing of said report, and after ten days' notice to the parties interested, move the court to set aside the report, and to order a new trial, as to any of the tracts of land; and upon good cause shown therefor, the said court may set aside the report as to such tract of land, and may recommit the matter to the same, or to other commissioners, who shall be ordered to proceed in like manner as those first appointed, but such matter shall not be more than twice committed to commissioners.

Other commissioners may be appointed.

Report to be confirmed after twenty days.

SEC. 30. Upon the expiration of twenty days after the filing of said report, or at such further time as may be appointed therefor, if the report has not been set aside as provided in the preceding section, and if the proceedings of said commissioners appear to have been correctly done, the said court shall confirm said reports and certify the same thereon.

When property to vest in corporation.

SEC. 31. Upon the compensation therein named being paid up, said company shall cause the said reports and certificates thereon, to be recorded in the recorder's office of said county, and the real estate, or the right, title or interest therein described in such report, shall be and become the property of said company for the purposes of its corporation, and shall be deemed acquired for, and appropriated to public use.

To be deemed taken for public use.

SEC. 32. Such company shall, within thirty days

after final confirmation of the report aforesaid, pay or tender the sum of money assessed by said commissioners for the compensation of each tract of land described in said report, and said payment or tender, may be made to the person or persons interested therein, according to the amount or extent of the right, title or interest owned or held by them; or the payment may be made to the said clerk of the court in which such proceeding was had for said persons, and the same shall be deemed valid for all purposes whatsoever, as if the said sum of money had been personally paid to each and all the persons entitled thereto.

When and where company to pay or tender compensation.

SEC. 33. The said court shall, at the time of the payment of the said sum of money to the clerk, direct and order the same to be paid over to the persons who shall, upon satisfactory proof, be entitled thereto.

Court to direct as to the payment of money.

SEC. 34. In all proceedings in relation to the sale or appropriation of real estate, and ascertaining and renewing compensation therefor for railroad purposes, as prescribed in this act, the term "person" shall be deemed to include municipal or other corporations.

"Person" includes municipal or other incorporations.

SEC. 35. That any corporation operating a railway or railroad within this Territory which shall injure or kill any live stock, by running any engine or engines, car or cars over or against any such live stock, shall be liable to the owner or owners of such live stock for the damage sustained by such owner or owners by reason of such injuring or killing of such live stock, and any such corporation injuring or killing any live stock by running any engine or engines, car or cars, over or against such live stock, shall within ten days thereafter, notify the owner or owners of such live stock so killed or injured of the fact; and any corporation failing to comply with the requirements of this section, shall be liable to the owner or owners of such live stock so killed or injured, in the full amount of the damages sustained by the owner or owners of such stock, by reason of the killing or injuring. Any person or persons owning any live stock which shall be killed or injured in the manner set forth in this section within six months after the said person or persons is or are notified of the said killing or injuring as provided herein, shall furnish the corporation having so killed or injured live stock, through the nearest agent, sworn evidence of the value of said live stock, and upon the payment by said corporation to the owner or owners of said live stock, of two-thirds of the value of said stock so ascertained to have been killed or

Corporation to maintain fences.

Persons owning live stock killed must give notice to corporation.

injured, said corporation shall be released from further liability.

Bell to be placed on locomotive, when to be sounded.

Proviso.

Sounding whistle equivalent to ringing bell.

Cars to be run at regular times to be fixed by notice; corporation to furnish accommodations for passengers and property.

Baggage, lumber and freight cars not to be placed in rear of passenger cars.

SEC. 36. A bell of at least twenty pounds weight must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road or highway, and be kept ringing until it has crossed such street, road or highway; *Provided*, That sounding the locomotive whistle, at least one-fourth of a mile before reaching any highway crossing shall be equivalent to ringing the bell, except in towns and at terminal places; and the whistle shall also be sounded for every street crossing while passing through towns during the prevalence of fogs, snow and dust storms; and all engines with or without trains must come to a full stop before crossing the track at grade of any other railroad at a distance not exceeding four hundred feet from the same, and must not proceed until the way is known to be clear when two blasts of the whistle must be given at the moment of starting, and every person in charge of a locomotive, for each and every neglect, shall be deemed guilty of a misdemeanor, and said company shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

SEC. 37. Every such company shall start, and run their cars for the transportation of persons and property at such regular time as they shall fix by public notice; and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer for transportation at the place of starting, at the junction of other railroads, and at siding or stopping places established for receiving and discharging way passengers and freight; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor; if the company or their agents refuse to take and transport any passengers or property, or to deliver the same at the regular appointed places, they shall be liable to the aggrieved party for all damages that may accrue from such refusal including costs of suit and a reasonable attorney's fee.

SEC. 38. It shall not be lawful to place baggage, freight, merchandise or lumber cars, in rear of passenger cars, and for any violation of this section, the company shall be liable to the party complaining, in the sum of five hundred dollars, and the person, agent, directors or officers so causing the cars to be placed shall be guilty of a misde-

meanor, and upon conviction, may be fined in any sum not exceeding five hundred dollars, or imprisonment not exceeding twelve months, or both, and should any accident happen to life or limb, by such unlawful arrangement of cars, the person, agent or officer who so directed, or suffered such arrangement shall be guilty of felony; and upon conviction, shall be imprisoned in the penitentiary for any term not less than one, nor more than ten years.

SEC. 39. In case any passenger shall be injured on the platform of any car, or on any baggage, wood, gravel or freight cars, in violating the printed regulations of the company, posted up at the time in a conspicuous place, inside of its passenger cars then in the train; or in violation of verbal instruction given by any officer of the train, such company shall not be liable for the said injury.

Company not liable, if person injured was violating regulations of company.

SEC. 40. Any passenger refusing to prepay his fare, or toll on demand, may be put off the cars at any stopping place the conductor or employees of the company may elect.

Passengers refusing to pay may be put out of cars.

SEC. 41. Every conductor, baggage master, engineer, brakeman or other employe of said railroad company employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the company by which he is employed, and no collector or conductor, without such badge, shall demand or be entitled to receive from any passenger, any fare, or ticket, or exercise any of the powers of his office or station, or interfere with any passenger or property.

Conductors, etc. to wear badges.

SEC. 42. A check shall be fixed to every package or parcel of baggage when taken for transportation, by the agent or employe of such company, and a duplicate thereof given to the passenger or person delivering the same; and if such check be refused on demand, the company shall pay to such person the sum of twenty dollars, to be recovered as in action of debt; and further, no fare or toll shall be collected or received from such passenger; and if such person shall have paid said fare, the same shall be returned by the conductor in charge of the train, and on the passenger producing said check, if said baggage or parcel shall not be delivered by the agent or employe of said company, the passenger may be a witness in any suit to prove the contents or value of said baggage, and for the recovery of damages, in any court having jurisdiction.

Shall have no authority without such badge.

Check to be affixed to baggage.

Duplicate to be given to person owning baggage.

SEC. 43. Every company organizing under this act

Map of land taken and obtained to be filed with auditor and county recorder, of the different counties.

or constructing or operating any railroad in this Territory shall, within a reasonable time, after their road shall be finally located, cause a map to be made of the land taken and obtained for the use thereof; and so far as necessary the boundaries of the several counties through which the road may run, and file the same in the office of the auditor of public accounts; and also like maps of the parts thereof located in the different counties, and file the same in the office of the recorder for the county in which said parts of such road shall be, there to remain as a record; maps and profiles shall be certified by the chief engineer, the president and secretary of the company, shall be kept in the office of the secretary of the company, subject to examination by all parties interested.

When acts of incorporation to become void by non user.

SEC. 44. If such railroad company shall not within two years after the filing of its original articles of association begin the construction of its road, and expend thereon at least five per cent. of the amount of its capital stock, and finish the road and put the same in full operation within ten years, its act of incorporation shall be void.

What damages corporation liable for.

SEC. 45. Any company constructing or operating lines of railroad in this Territory, shall be liable for all damage which may be sustained through destruction of property caused by fire communicated from their locomotive engines, or neglect on their part to make good and sufficient crossings at points where lines of travel cross the railways, the damage so sustained to be determined before the nearest court having jurisdiction, and to be collected, in case payment is refused, by attachment and sale of any company property which can be found.

Companies may consolidate.

SEC. 46. It shall be lawful for any railroad companies organized under the laws of this Territory to consolidate their capital stock, debts, property, assets and franchises, with any railroad company or companies organized under the laws of any States or other Territory.

Conditions, provisions, restrictions, etc., under which consolidations shall be made.

SEC. 47. Said consolidations shall be made under the conditions, provisions, restrictions, and with the powers hereinafter in this act mentioned, that is to say, the presidents or secretaries of the several corporations proposing to consolidate, may enter into a joint agreement under the corporate seal of each company for the consolidation of said several companies, and prescribing terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence,

the number of shares of capital stock, the principal place of business of the new company in each State or Territory traversed by the line of railway, and such other provisions as may be required by law to be inserted in an original certificate of incorporation, the manner of converting the capital stock of each of said companies into that of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and consolidation of said companies; said agreement shall be authorized or ratified by the board of directors of each company consolidating, and shall be submitted to the stockholders of each of the said companies or corporations, at a meeting thereof called for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting and the object thereof, shall be given by written or printed notices, addressed to each of the persons in whose names the capital stock of said companies stands on the books thereof, and delivered to such persons respectively, or sent to them by mail when their post office address is known to the company, and also by a general notice published in some newspaper in the city, town or county where such company has its principal office or place of business, for the period of thirty days before such meeting is to be held, and at the said meeting of stockholders, the said agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of all the stockholders shall be for the adoption of said agreement, then that fact shall be certified thereon by the secretary of the respective companies under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the auditor of public accounts, and in the office of the Secretary of this Territory, and shall from thence be deemed and taken to be the agreement and act of consolidation of said companies, and a copy of said agreement and act of consolidation, duly certified by said auditor or by the Secretary of the Territory, under his official seal, shall be evidence of the existence of said new corporation; *Provided*, That if the mode of ratifying said agreement of consolidation in such other State or Territory shall vary from the mode herein prescribed, then said agreement may be ratified by the railroad company or corporation of such other State or Territory in the mode prescribed by the laws thereof.

Notice.

When consolidation is completed.

Consolidation may be ratified under laws of other States, etc

After consolidation to be known as one corporation.

SEC. 48. Upon the making and perfecting the said agreement and act of consolidation, as provided in the preceding sections, and filing the same as aforesaid, the several corporations parties thereto shall be deemed and taken to be one corporation, by the name provided in said agreement and act, possessing within this Territory all the rights, privileges and franchises, and subject to all the restrictions, disabilities, duties and liabilities of each of such corporations so consolidated.

All rights, franchises, privileges, property, etc., vested in new corporation.

SEC. 49. Upon the consummation of said consolidation as aforesaid, all and singular the rights, privileges and franchises of each of said corporations parties to the same, and all the property, real, personal and mixed, and all debts due on whatever account, as well as of stock, subscriptions and other things in actions belonging to each of such corporations, shall be taken and be deemed to be transferred to and vested in such new corporation without further act or deed, and all property, all rights of way, and all and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to said agreement; and the title to real estate, either by deed or otherwise, under the laws of this Territory, vested in either of such corporations, shall not be deemed to revert or be any way impaired by reason of this act; and all debts, liabilities and duties of either of said companies shall thenceforth attach to the said new corporation, and be enforced against it to the same extent as if said debts, liabilities had been incurred or contracted by it.

Must establish office in the Territory.

SEC. 50. Such new company shall establish an office at some point in this Territory on the line of its road, and may change the same at pleasure, giving public notice thereof, of the same in some newspaper published and having general circulation in the Territory.

Suits may be brought and maintained against.

SEC. 51. Suits may be brought and maintained against such new company in any of the courts of this Territory for all causes of action, in the same manner as against other railroad companies organized under the laws of this Territory.

Road and other property subject to taxation.

SEC. 52. That portion of the road of such consolidated company, and all its real estate and other property within this Territory, shall be subject to like taxation and assessed in the same manner as property of other railroad companies within this Territory.

May lease other roads, etc.

SEC. 53. Any railroad company organized under the laws of this Territory, may lease and operate any part, or all of a railroad constructed by another company, within

or without this Territory; and any railroad company organized under the laws of the United States, or any State or Territory may lease and operate any part or all of a railroad constructed by another company within this Territory. Such leases may be made on such terms and conditions as may be mutually agreed upon between said companies.

SEC. 54. All railroad companies heretofore organized, or which may hereafter be organized pursuant to the laws of this Territory, shall have power to issue bonds for such sum or sums, and payable at such times and places, and drawing interest at such rates as they may deem proper; and they are severally empowered hereby to execute, trust deeds, or mortgages, or both, upon the whole or any part of their railroad lines, property, franchises, incomes and profits acquired, or to be acquired to secure the payment of such bonds and interest; and if such bonds are sold below their par value, they shall be binding and valid, according to their terms.

Companies have power to issue bonds and mortgage property.

SEC. 55. Any trust deed or mortgage made upon the lands, roads, or other property of any such railroad company shall bind, and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock, machinery and other personal property; and a purchaser at a foreclosure sale, or under a trust deed, shall have and enjoy all the rights of a purchaser at an execution sale.

Trust deeds and mortgages to be lien upon property mentioned.

SEC. 56. Such trust deeds or mortgages may, by their terms, include and cover, not only the property of the company making them at the date of execution thereof, but property of every kind which may thereafter be acquired by such company, together with the material and property necessary for the repair, use and operation of such road, and the same, when so stated, shall be as valid and binding, and as effectual to pass the property as it would be were it in the possession of such company at the time of the execution of such instrument.

Trust deeds or mortgages may cover property thereafter acquired.

SEC. 57. Every deed or mortgage made by any railroad company, organized as aforesaid, shall be recorded in the office of the county recorder of each organized county through which such road shall run in this Territory and in any county where it may hold lands subject to such deeds or mortgage, and such record shall be notice to the whole world of the rights of all parties having interest under the same; and for this purpose, and to secure the rights of the mortgagees or parties interested under such mortgages or

Deed and mortgages to be recorded in the recorder's office of each county, etc.

Record to be
notice of the
rights of parties.

Trust deeds and
mortgages here-
tofore executed
validated.

Record to be
notice, etc.

Corporations
may be formed
to purchase
roads.

Corporations
heretofore
formed vali-
dated.

trust deeds, so executed and recorded, the rolling stock, machinery, personal property and material necessary for the operation and the repairs of the road of such company, belonging to the same and appertaining thereto, shall be deemed fixtures on and a part of the road; and such mortgages, or trust deeds so recorded, shall have the same effect both as to notice and otherwise, as they have to real estate covered by them, notwithstanding the fact that the possession of such property remain with the mortgagees.

SEC. 58. Every deed of trust or mortgage heretofore executed, by any railroad corporation, organized pursuant to the laws of this Territory, is hereby declared valid, legal and binding, to the full extent and scope of the terms and conditions of such deed or mortgage; and the records of such instruments, heretofore made in the county records of the several counties into or through which such road passes, shall be deemed, and is hereby declared, to impart notice to all the world of the contents of such deeds or mortgages, and of the rights of those claiming under them; and they shall in every particular be as effectual security as if executed and recorded after the approval of this act.

SEC. 59. Railroad corporations may be formed pursuant to the laws of this Territory for the purpose of buying any railroad property situated therein, when the same is to be sold under trust deed, mortgage, or private sale; and any railroad corporation heretofore formed pursuant to the laws of this Territory which had for its purpose the purchase of railroad property already constructed, is hereby declared a valid corporate body, and any purchase of railroad property by such corporation that was sold pursuant to trust deed, mortgage, judgment and decree of court, or private sale, is hereby made valid and binding.

CHAPTER IV.

Assessments.

Directors may
levy assess-
ments.

SEC. 1. The directors of any corporation existing under the laws of this Territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital

stock thereof in the manner and form and to the extent hereinafter provided.

SEC. 2. No assessment shall exceed the ten per cent. of the amount of the capital stock named in the articles of incorporation except in the cases in this section otherwise provided for, as follows:

Amount of assessment, limitation.

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its obligations or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon its capital stock, or if a less amount be sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless the articles of incorporation otherwise provide.

SEC. 3. No assessment shall be levied while a portion of a previous one remains unpaid, unless—

No assessment shall be levied while previous one is unpaid.

First—The power of the corporation has been exercised in accordance with the provisions of this Chapter for the purpose of collecting such previous assessment;

Second—The collection of such previous assessment has been enjoined; or,

Third—The assessment falls within the provisions of preceding sections.

SEC. 4. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day subsequent to the full term of the publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for a sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

What order levying assessment must state.

SEC. 5. Upon making the order the secretary shall cause to be published a notice thereof, in the following form:

Secretary must give notice.

(Name of corporation in full, location of principal place of business.) Notice is hereby given that at a meeting of the directors, held on (date), an assessment of (amount) per share was levied on the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment may remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed) to pay the delinquent assess-

Form of.

ment, together with cost of advertising and expense of sale.
(Signature of secretary, with location of office.)

Notice of assess-
ment, how
given.

SEC. 6. The notice must be served personally on each stockholder, or, in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks, in some newspaper of general circulation, published in Salt Lake City, also in some newspaper published in the county where the works of the corporation are situated, if a paper be published therein.

Secretary must
publish notice of
delinquent
stock.

SEC. 7. If any portion of the assessment mentioned in the notice, remain unpaid on the day specified therein for declaring the stock delinquent, the secretary shall, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for, shall have been published, a notice substantially in the following form:

Form of.

(Name of corporation in full, location of principal place of business.) Notice.—There are delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto if any) the several amounts set opposite the names of the respective shareholders as follows: (Names, number of shares, number of certificates, number of shares, amount,) and in accordance with law (and order of the board of directors, made on the (date) if any such order shall have been made,) so many shares of each parcel of such stock as may be necessary, will be sold at the particular place on the (date) at (the hour) of such day to pay delinquent assessment thereon, together with the cost of advertising and expenses of the sale.

What notice
must state.

SEC. 8. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where the certificate may not have been issued to parties entitled thereto. In which case the number of shares and amount due thereon, together with the fact that the certificates of such shares have not been issued must be stated,

How long notice
must be pub-
lished.

SEC. 9. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale, when published in a weekly paper, must be published each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

SEC. 10. The three preceding sections shall not be construed as requiring companies incorporated for irrigating purposes to publish in any newspaper the notices, or either of them, therein mentioned; but personal service of said notice, or notices in writing sent by mail, post paid, addressed to each stockholder at his place of residence shall in all cases be deemed sufficient. The affidavit of the person making personal service, or mailing the same, shall be sufficient proof of such service.

Irrigating companies not required to publish notice in newspapers.

SEC. 11. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment, or costs of advertising, remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of advertising and sale.

Publication of notice gives corporation power to sell.

SEC. 12. On the day, at the place and at the time appointed in the notice of sale, the secretary shall, unless otherwise ordered by the board of directors sell, or cause to be sold, at public auction to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying shall only be required to pay the actual costs of advertising in addition to the assessment.

Stock must be sold to highest bidder for cash.

SEC. 13. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share, is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

Who is highest bidder.

SEC. 14. If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the secretary, president, or any director thereof, at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges shall be credited as paid in full on the books of the corporation, and the entry of the transfer of the stock to the corporation shall be made on the books thereof. While the stock remains the property of the corporation, it is not assessable, nor shall any dividends be declared thereon, but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

Corporation may bid in the stock.

Such stock not assessable, etc.

SEC. 15. All purchasers of its own stock vest the legal title to the same in the corporation, and the stock so

Corporation has legal title to stock purchased; such cannot be voted.

purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit in accordance with the by-laws of the corporation, or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Dates fixed for assessments or sales may be extended.

SEC. 16. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time, for not more than thirty days, by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice shall be effectual, unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Failure to publish notice does not invalidate assessment.

SEC. 17. No assessment is invalidated by a failure to make publication of the notices herein provided for, nor by the non-performance of any act required in order to enforce payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying assessment, are void, and publication must be begun anew.

No action shall be sustained to recover stock, until amount realized is first paid or tender thereof.

SEC. 18. No action shall be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of the sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tender, to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all the subsequent assessments which may have been paid thereon, and interest on such sums, from the time they were paid, and no such action shall be sustained, unless the same is commenced by the filing of a complaint, and the issuing of a summons thereon, within six months after such sale was made.

Proof of publication.

SEC. 19. The publication of notice required by this Chapter, may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer shall be *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom and for what price, and of the fact of the purchase money being paid. The affidavit shall be filed in the office of the corporation, and copies of the same,

certified by the secretary thereof, shall be *prima facie* evidence of the fact therein stated. Certificates signed by the secretary and under the seal of the corporation shall be *prima facie* evidence of the contents thereof.

SEC. 20. Any person who is the holder of full paid up capital stock, shall not be liable for any assessments or for any indebtedness of the corporation otherwise than by sale of his or her stock, as herein provided, unless distinctly provided for in the articles of incorporation, which articles, or incorporation, shall not be changed in this respect without the consent of all the stockholders in writing.

No person liable for assessment, etc., unless by sale of stock.

SEC. 21. The following acts of the Governor and Legislative Assembly of the Territory of Utah are hereby repealed:

Repealing clause.

An act entitled "An Act to Provide for the Organization of Telegraph Companies," approved January 14, 1864. An act entitled "An Act for the Regulation of the Telegraph, and to secure secrecy and fidelity in the transmission of Telegraphic Messages," approved January 16, 1863. An act entitled "An Act providing for the Incorporation of Railroad Companies and the management of the affairs thereof," approved February 12, 1869. An act entitled "An Act to amend 'An Act providing for the Incorporation of Railroad Companies and the management of the affairs thereof,' approved February 12, 1869," approved February 16, 1876. An act entitled "An Act providing for Incorporating Associations for Mining, Manufacturing, Commercial, and other Industrial Pursuits," approved February 18, 1870. An act entitled "An Act supplemental to 'An Act providing for Incorporating Associations for Mining, Manufacturing, Commercial, and other Industrial Pursuits,' approved February 18, 1870," approved February 22, 1878. An act entitled "An Act empowering Railroad Corporations to Deed and Mortgage their Franchises and property, and Confirming such Conveyances heretofore made, and for other purposes," approved February 6, 1880. An act entitled "An Act amendatory of and supplemental to Chapter IV., Title II., Compiled Laws of Utah," approved February 19, 1880. An act entitled "An Act authorizing the Consolidation of Railroad Companies, and the Leasing of Railroads," approved March 4, 1882. An act entitled "An Act amending Section 534 of the Compiled Laws of Utah," approved March 9, 1882. Saving and excepting

all rights, actions, and rights of action which shall have accrued or may accrue under or by virtue of any of the provisions of the acts hereby repealed.

Approved March 13, 1884.

CHAPTER XLVI.

OF INSURANCE COMPANIES.

AN ACT relating to Fire Insurance Companies.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That it shall be unlawful for any fire insurance company, association, corporation or partnership incorporated by or under or organized pursuant to the laws of any foreign government, any State or Territory of the United States, or any person or persons, directly or indirectly to take any risks or transact any business of fire insurance in this Territory, unless possessed of an actual paid up capital of not less than one hundred thousand dollars.

Unlawful to do
business without
paid up capital
of \$100,000

SEC. 2. It shall be unlawful for any agent of any fire insurance company to transact the business of fire insurance within this Territory, unless the insurance company shall have first obtained a certificate of an authority from the Secretary of the Territory, which certificate shall be issued to said agent upon his filing with said secretary, a statement, sworn to by an officer or manager of said company, showing: First—The name and locality of the company; Second—The amount of capital stock; Third—The capital paid up; Fourth—The amount of its assets and liabilities; Fifth—Net surplus over all liabilities; Sixth—The name of its attorney or agent for the Territory, upon whom service or process in any civil action, against said company, may be made; Seventh—Receipts and expenditures during the year.

Unlawful for
agent of any
company to
transact business
without certificate
of authority.
Statement must
be filed in secretary's
office.

SEC. 3. The statement referred to in Section 2 shall be renewed annually, in the month of April of each year, and shall be published by each company, on or before the 30th day of April of each year, at least four times in some newspaper published in this Territory and having general circulation therein. The first statement may be made at any time.

Statement must be renewed annually and published in some newspaper.

SEC. 4. It shall be lawful for the agent of a company or companies which have complied with the provisions of this act, to procure insurance through such companies, their officers or agents, from other insurance companies having a paid up capital of not less than one hundred thousand dollars.

Agent may solicit insurance in other companies, when.

SEC. 5. The Secretary of the Territory shall be entitled to the following fees herein: For filing statements mentioned in Section 2, three dollars; for issuing certificate of authority, two dollars; for issuing each subsequent certificate of authority to other agents of the same company, one dollar.

Fees of secretary.

SEC. 6. It shall be lawful for any number of persons to associate themselves together for the establishment of a fire insurance company in this Territory, and they shall be deemed a body corporate authorized under the laws of the Territory to transact fire insurance business, on complying with the provisions of Chapter IV., Title XI., of the Compiled Laws of this Territory, relating to corporations for general purposes; and all acts amendatory thereof or supplementary thereto; *Provided*, That it shall not be lawful for any such company to transact a fire insurance business in this Territory unless it shall have a paid up capital of not less than one hundred thousand dollars, and shall have complied with the provisions of this act.

Companies may be formed under laws of Territory.

Proviso.

SEC. 7. It shall be lawful for any fire insurance company incorporated under the laws of this Territory to invest its capital and funds accumulated in the course of its business, or any part thereof, in bonds of the United States; in real estate within the Territory; in mortgages on real estate within the Territory; in bonds of any school district or incorporated city of the Territory, authorized by the Legislature to be issued; in stocks or bonds of any solvent dividend-paying institutions other than mining corporations, incorporated under the laws of the Territory; to change and re-invest the same as occasion may from time to time require; and to lend the same, or any part thereof, on the security of such above named

How companies may invest capital and funds.

Proviso,

property; *Provided, always,* That the current market value of such property shall be at the time of investment at least fifty per cent. more than the sum loaned thereon.

Auditor of public accounts must examine securities and issue certificates. Certificate to be filed in secretary's office.

SEC. 8. It shall be the duty of the auditor of public accounts to examine the securities and investments of every fire insurance company organized under the laws of this Territory, and to approve the same, and to issue to each company, so incorporating, a certificate approving its securities, which certificate shall be filed with the Secretary of the Territory. No fire insurance company shall have authority to commence business until its securities shall have been approved by the auditor and the certificate of approval is filed in the Secretary's office. The auditor shall be entitled to receive and collect from each company for each day or fraction thereof occupied in examining said securities, the sum of ten dollars.

Penalty.

SEC. 9. Any person violating any of the provisions of this act shall be guilty of a misdemeanor.

Approved March 13, 1884.

CHAPTER XLVII.

OF PAYSON CITY.

AN ACT amending "An Act to Incorporate the City of Payson," approved January 20, 1865.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That the city council of Payson City shall have power and is hereby authorized by ordinance and enforcement thereof within their prescribed boundaries to regulate, restrain or prohibit the running at large of cattle, horses, mules, sheep, swine, goats, and all kinds of poultry; and when so running at large to distrain, impound and sell the same for the penalty and costs incurred therein, and impose penalties by fine upon the owners of the same for violation of such ordinance; *Provided,* That the proceeds of such sales shall be

paid into the treasury of Utah County, less the amount of costs and expenses incurred in distraining, impounding and selling the same, to be used as provided for in Section 408 of the Compiled Laws of Utah; *Provided further*, That such cost and expenses shall not exceed those provided for in Section 413 of the Compiled Laws of Utah for similar services.

SEC. 2. To direct and control the location of railroad tracks within the city, and to regulate the rate of speed at which the engines and trains may run within the inhabited portions of said city.

SEC. 3. To regulate and control the locations of gas works, electric lights, telegraph and telephone lines, canals or water courses and all improvements of a similar nature.

SEC. 4. To erect a jail or other buildings for the safe keeping of prisoners, and adopt rules and regulations for the management of the same.

Approved March 13, 1884.

CHAPTER XLVIII.

OF CRIMINAL CASES.

AN ACT amending an Act regulating the Mode of Procedure in Criminal Cases, approved February 22, 1878.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 10 of "An Act regulating the mode of procedure in criminal cases, approved February 22, 1878," be amended so as to read as follows: SEC. 10. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in Section 199, or upon a judgment of a court, a jury having been waived in a criminal action not amounting to felony.

No person to be convicted but upon a verdict or judgment.

SEC. 2. That Section 71 of said act be amended so

Admission to
bail.

as to read as follows: SEC. 71. If the offense charged in the warrant issued pursuant to Section 69 is a misdemeanor, the officer must, upon being required by the defendant, take him before a magistrate of the county in which the warrant was issued who, unless he have jurisdiction to try the defendant, must proceed as provided in Chapter VII. of this Title.

Conductor or
other person in
charge of rail-
road trains may
make arrest
without warrant.

SEC. 3. That Section 75 of said act be amended by adding the following subdivision to stand as Subdivision 4: 4. A conductor or other person having charge of any railway train in this Territory, shall have power to arrest without a warrant any person disturbing the peace of a traveler or committing any offense against the laws of the Territory while traveling with or upon the train of which he is in charge.

Doors and win-
dows may be
broken, when.

SEC. 4. That Section 82 of said act be amended so as to read as follows: SEC. 82. To make an arrest, a private person, if the offense is a felony, and in all cases, a peace officer, may break open the door or window of the building in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

Person arrested
without a war-
rant to be taken
before a magis-
trate. Informa-
tion to be filed.

SEC. 5. That Section 87 of said act be amended so as to read as follows: SEC. 87. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken to the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate. A conductor or other person who has made an arrest as provided in Subdivision 4 of Section 75 of this act, shall without unnecessary delay, take the person so arrested before any accessible magistrate, and an information, stating the charge against the person, must be laid before such magistrate, and the magistrate before whom such charge is made, if the offense is triable by him, shall have full jurisdiction over said offense and the defendant, to try and determine said offense. If he have not jurisdiction to try the defendant for the offense charged he must proceed as provided in Chapter VII. of this Title.

Testimony, how
taken and au-
thenticated.

SEC. 6. That Section 103 of said act be amended so as to read as follows: SEC. 103. The testimony of each witness in cases of homicide must be reduced to writing, as a deposition, by the magistrate, or under his direction; and in other cases upon the demand of the prosecuting

officer. The magistrate before whom the examination is had, may, in his discretion, order the testimony and proceedings to be taken down in short hand, in all examinations herein mentioned, and for that purpose he may appoint a short hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in short hand, the answer or answers of the witness need not be read to him.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuse to sign it, his reason for refusing must be stated in writing as he gives it, except in cases where the deposition is taken down in short hand, it need not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in short hand, the transcript of the reporter appointed as aforesaid, when written out in long hand writing, and certified as being a correct statement of such testimony and proceedings in the case shall be *prima facie* a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination, (if the defendant be held to answer the charge), transcribe into long hand writing his said short hand notes, and certify and file the same with the clerk of the district court of the district embracing the county in which the defendant was examined, and shall in all cases file his original notes with said clerk. The reporter's fees shall be paid out of the treasury of the county.

SEC. 7. That the first clause of Section 117 of said act be amended so as to read as follows: SEC. 117. All public offenses triable in the district courts, except cases appealed from justices' courts, must be prosecuted by indictment.

Public offenses in district courts to be prosecuted by indictment, except when.

SEC. 8. That Section 120 of said act be amended by striking out Subdivision 5.

Manner of taking and trying challenges.

SEC. 9. That Section 121 of said act be amended so as to read as follows: SEC. 121. The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court.

Indictment must charge but one offense, but offenses may be set forth in different forms, etc.

SEC. 10. That Section 153 of said act be amended so as to read as follows: SEC. 153. The indictment must charge but one offense, but the same offense may be set forth in different forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative of the same count.

Pleading in an indictment for larceny, embezzlement, etc.

SEC. 11. That Section 165 of said act be amended so as to read as follows: SEC. 165. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof.

Distinction between accessory before the fact and principal abrogated.

SEC. 12. That Section 168 of said act be amended so as to read as follows: SEC. 168. The distinction between an accessory before the fact and principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried and punished as principals, and no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Grounds of demurrer.

SEC. 13. That Subdivision 2 of Section 192 of said act be amended so as to read as follows: 2. That it does not substantially conform to the requirements of Sections 150 and 151.

Demurrer, if a lower, bar to another prosecution, unless.

SEC. 14. That Section 196 of said act be amended so as to read as follows: SEC. 196. If the demurrer is allowed, the judgment is final, upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or to another grand jury.

SEC. 15. That Section 201 of said act be amended by adding the following subdivision to stand as Subdivision 4: 4. Once in jeopardy.

Plea to an indictment.

SEC. 16. That Section 202 of said act be amended by adding the following subdivision to stand as Subdivision 4: 4. If he plead once in jeopardy. "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place and court)."

Form of plea.

SEC. 17. That Section 205 of said act be amended so as to read as follows: SEC. 205. All matters of fact tending to establish a defense other than that specified in the third and fourth subdivisions of Section 201 may be given in evidence under the plea of not guilty.

What may be given in advance under a plea of not guilty.

SEC. 18. That Section 208 of said act be amended so as to read as follows: SEC. 208. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, the conviction, acquittal or jeopardy is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment.

Conviction or acquittal on an indictment for a higher offense, effect of.

SEC. 19. That Section 216 of said act be amended by adding the following subdivision to stand as Subdivision 3: 3. Upon a plea of once in jeopardy.

Issue of fact.

SEC. 20. That Section 217 of said act be amended so as to read as follows: SEC. 217. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony by the consent of both parties expressed in open court and entered in its minutes.

How tried.

SEC. 21. That Section 221 of said act be amended so as to read as follows: SEC. 221. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

Order of disposing issues on the calendar.

1. Indictments for felony, when the defendant is in custody.

2. Actions for misdemeanor, when the defendant is in custody.

3. Indictments for felony, when the defendant is on bail.

4. Actions for misdemeanor, when the defendant is on bail.

SEC. 22. That Section 223 of said act be amended so as to read as follows: SEC. 223. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by affidavit, direct the trial to

Postponement, when and how ordered.

be postponed to another day of the same or of the next term.

If challenge allowed, jury to be discharged; if disallowed, to be impaneled.

SEC. 23. That Section 233 of said act be amended so as to read as follows: SEC. 233. If, either upon exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury, so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

Peremptory challenges, number of.

SEC. 24. That Section 238 of said act be amended so as to read as follows: SEC. 238. If the offense charged is punishable with death, the prosecution and the defense shall each be allowed fifteen peremptory challenges. On a trial for any other offense, the prosecution and the defense shall each be allowed three peremptory challenges.

Challenge for implied bias, ground of.

SEC. 25. That Subdivisions 5 and 6 of Section 242 of said act be amended so as to read as follows: 5. Having served on a trial jury which has tried another person for the offense charged. 6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

Causes of challenge, how stated.

SEC. 26. That Section 244 of said act be amended so as to read as follows: SEC. 244. In a challenge for implied bias, one or more of the causes stated in Section 242 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of Section 241 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; *Provided*, It appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter.

Challenge, how tried.

SEC. 27. That Section 246 of said act be amended so as to read as follows: SEC. 246. If the facts are denied the challenge must be tried by the court.

Triers abolished.

SEC. 28. That Sections 247, 248, 252 and 253 of said act be, and the same are hereby repealed.

Challenge for implied bias, how determined.

SEC. 29. That Section 251 of said act be amended so as to read as follows: SEC. 251. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court.

SEC. 30. That Subdivision 6 of Section 257 of said act is hereby repealed; and that Subdivision 7 of said section be amended so as to read as follows: 6. The judge may then charge the jury, and must do so on any points pertinent to the issue if requested by either party; and he may state the testimony and declare the law; and in each case he shall inform the jury that they are the sole judges of the credibility of the witnesses, of the weight of the evidence, and of the facts. If the charge be not given in writing, it must be taken down by the phonographic reporter.

Order of trial.

SEC. 31. That Section 283 of said act be amended so as to read as follows: SEC. 283. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

In all other cases court to decide questions of law.

SEC. 32. That Subdivision 2 of Section 309 of said act be amended so as to read as follows: 2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

Exceptions, in what case may be taken

SEC. 33. That Section 310 of said act be amended so as to read as follows: SEC. 310. When the party desires to have the exceptions, taken at the trial settled in a bill of exceptions, the draft of the bill must be prepared by him and presented, upon notice of at least ten days to the prosecuting attorney, to the judge for settlement, within fifteen days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the supreme court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge, and filed with the clerk of the court.

Exceptions, when to be settled, signed and filed.

SEC. 34. That Section 314 of said act be amended so as to read as follows: SEC. 314. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

Bill of exceptions must contain, what.

SEC. 35. That Section 317 of said act be amended so as to read as follows: SEC. 317. The granting of a new

Effect of new trial.

trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in the bar of any conviction which might have been had under the indictment.

Appeals in criminal cases, when to be heard and determined.

SEC. 36. That Section 372 of said act be amended so as to read as follows: SEC. 372. All appeals in criminal cases must be heard and determined at the first term of the appellate court after the record is filed, unless continued on motion or with the consent of the defendant.

Defendant, when not a competent witness.

SEC. 37. That Section 422 of said act be amended so as to read as follows: SEC. 422. A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people the same as any other witness. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding.

Failure to testify raises no presumptions against him.

SEC. 38. That Section 429 of said act be amended by striking out Subdivisions 1, 2, 3, and 4.

Application for new trial, how made.

SEC. 39. That Section 431 of said act be amended so as to read as follows: SEC. 431. The application must be made upon affidavit, stating

1. The nature of the offense charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense of the action;
4. That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

Error and mistakes, when not material.

SEC. 40. That Section 479 of said act be amended so as to read as follows: SEC. 479. Neither a departure from the form or mode prescribed by this act in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

Approved March 13, 1884.

CHAPTER XLIX.

OF IRRIGATION COMPANIES.

AN ACT Compiling the Laws relating to the Incorporation of Irrigation Companies.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That upon the majority of the citizens of any county or part thereof, representing to the county court that more water is necessary, and that there are streams or parts of streams unclaimed or unused, which, if brought out of their natural channels and thrown upon tracts of land under cultivation, or to be put under cultivation, can be of value to the interests of agriculture, the county court having jurisdiction may proceed to organize the county, or part thereof, into an irrigation district; and thereafter the landholders of such district shall be equally entitled to the use of the water in, or to be brought into such district, according to their acknowledged rights; *Provided*, Such landholders pay their proportion of the expense incurred in the construction and keeping in repair of the necessary canals, flumes, dams or ditches.

Organization of
irrigation
districts.

SEC. 2. The citizens of an irrigation district, when so organized for the purposes provided in the preceding section, may, in mass meeting, proceed to the formation of a company, by electing, *viva voce*, not less than three nor more than thirteen trustees, a secretary and a treasurer. Notice of the time, place and object of said mass meeting shall be given by the clerk of the county court, at least ten days previous, by advertising three times in some newspaper having general circulation in the county, and by posting up notices in three public places in the district.

Citizens of district may form company; number of trustees; decide how tax levied.

SEC. 3. It shall be the duty of the trustees so elected to locate the proposed canal or ditch, determine the amount and quality of the land to be benefited thereby, to estimate the cost, including dams, flumes, locks, waste weirs and all the appurtenances belonging thereto, the amount per acre of the percentage on taxable property which will be necessary to construct the same.

Trustees to locate canal, etc., and report to county court.

Duty of county court after public notice to hold an election; question to be submitted.

SEC. 4. It shall then be the duty of the trustees to make a report to the county court of the location and estimate provided for in Section 3 of this act; also to call a meeting of the holders of the lands to be benefited by the proposed canal or ditch, at which a copy of said report shall be presented, and the said landholders shall vote "Yes" or "No" upon the following questions:

1. Do you mutually agree to pay——per acre land tax to construct the proposed canal or ditch?

2. Do you approve the action of the mass meeting in the election of officers?

Notice shall be given by the trustees at least ten days previous to the time appointed for such meeting, by advertising at least three times in some newspaper having general circulation in the county, and by posting up notices in three public places in the district. Said advertisement and notice shall state distinctly the time and place and object of such meeting, and be signed by a majority of the trustees and the secretary. The voting at said meeting shall be by ballot, and the chairman and secretary of said meeting shall be the judge and clerk of the election. A ballot box shall be provided by the trustees, and each voter shall present his ballot to the judge of election, who shall deposit it in the box, and the clerk shall write the name of the voter in a poll list or book which shall also be provided by the trustees. No person shall be entitled to vote at said meeting or election unless he is a landholder in the district. Immediately after the close of the election, the ballots shall be openly counted by the judge and clerk, assisted by two persons chosen by the voters present. A certificate of the results of the election, signed by the persons who counted the votes, shall be forwarded at once to the clerk of the county court by the judge of said election.

Who entitled to vote.

When two-thirds vote for tax it becomes a law.

Proviso.

Additional proviso.

SEC. 5. If upon counting the votes it shall appear that two-thirds of the votes polled have been answered in the affirmative, then the tax so agreed upon shall be a law in the said irrigation district; and the tax when collected shall be paid over to the treasurer of said company on his order; *Provided*, That not exceeding one-half of the tax so agreed upon shall be collected at one time, and the residue to be collected as the work progresses; *Provided further*, That if the first estimate prove insufficient for the construction of the canal or ditch with its appurtenances, then additional taxes may be assessed in the same manner as hereinbefore provided until the said canal or ditch is completed.

SEC. 6. If less than two-thirds of the votes polled are answered in the affirmative, then all proceedings under this act shall be null and of no effect; *Provided*, That if there are objections to the officers so elected by the mass meeting, the electors may write other names on their tickets; the persons having the most votes to be declared elected, and it shall be the duty of the county clerk to notify such officers forthwith of their election.

When proceedings are null and void.

Proviso.

SEC. 7. Within twenty days after receiving such notice the officers so elected shall file bonds in the office of the clerk of the county court, conditioned for the faithful performance of their several duties; the amount of such bonds to be declared by the county court having jurisdiction.

Bonds to be given and filed.

SEC. 8. The term of office of the first trustees, secretary and treasurer shall be till the next general election; and thereafter for two years, and until their successors are elected and file bonds.

Term of office.

SEC. 9. All subsequent elections for determining the rate of tax, shall be held annually on the first Monday in December, and for the election of company officers, biennially, on the same day, at such time and place within the district as shall be designated by the trustees, at which time the number of trustees may be changed by a two-thirds vote to not less than three nor more than thirteen. Notice of said election shall be given and the election conducted and certificates thereof returned, as provided in Section 4 of this act, and the officers elected shall give bonds as provided in Section 7 of this act. The rate of tax determined at said election by a majority vote shall be a law in said irrigation district, and shall constitute a permanent lien on the interest of the taxpayer in said canal or ditch and his right to the use of the water therein flowing, from the day of assessment; *Provided*, That no tax created or payable by this act shall be or create a lien upon the land.

Elections to be held annually.

SEC. 10. The trustees at their first meeting shall elect one of their number president, and it shall be their duty and they shall have power to fill any vacancy which may occur in the board by death, change of residence, or otherwise; and the persons chosen for this purpose, shall hold office until the next annual election. The trustees shall also have power to meet at such times and places as they may deem expedient to make by-laws, rules and regulations necessary to carry into effect the objects of the people; to appoint agents, subordinates and officers, and employ

Trustees to elect one of their number president and to fill vacancies in board.

May make by-laws and regulations; may appoint agents, officers, etc.

such workmen as may be requisite; to appoint assessors and collectors, or make agreement with the county assessors to assess and collect the tax, and notify collectors when additional installments of the tax will be needed, to construct and complete said canals or ditches, with all necessary appurtenances thereto; to cause to be kept an accurate account of all receipts and disbursements, and to complete said canals and ditches and settle all accounts of the same. Said trustees shall make an annual report of their proceedings under this act to the county court on or before the first day of February, and shall file with the clerk of the county court a map of said irrigation district, showing the location and subdivision of land therein and of the company's canals and ditches.

Must make annual report.

SEC. 11. The trustees shall have power to sue and be sued, plead and be impleaded, to have and to hold all such real estate and personal property as may be necessary to construct the contemplated ditch or canal, including all appurtenances belonging thereto.

Power of trustees.

SEC. 12. If any part of the lands to be benefited by the proposed ditch or canal are not legally claimed, then such lands may be appraised by the trustees and shall be held and the possession of them sold by the trustees, as opportunity may offer, and the estimated amount of funds necessary to complete such canal or ditch shall be decreased by the estimated value of such lands, previous to the levy and assessment of any tax.

Proceedings in case lands to be benefited are not legally claimed.

SEC. 13. Where the streams to be taken out for irrigation purposes come from counties other than the one in which the district is situated, but where there are no existing claims to the water and where no individual or settlement will be injured thereby, then the power of said irrigation district is hereby extended to said other county, insomuch as said extension may be necessary for the construction of dams to turn the waters, and ditches or canals with all necessary appurtenances as may be necessary to convey the same to where it is to be used.

In what cases power extended to another county.

SEC. 14. Where lakes or ponds in natural basins have outlets, or where such can be made by dams across hollows, such lakes or ponds may be used as reservoirs, to store water for lands lying on lower levels; and the people of any irrigation district may, under the provisions of this act, construct such artificial or use such natural basins for irrigation purposes; *Provided*, The waters of such lakes or ponds are in no case to be raised, by dams or otherwise, so

When lakes or ponds may be used as reservoirs.

as to interfere with or damage settlers upon the margin thereof.

SEC. 15. Upon the construction or partial construction of any canal, ditch or reservoir contemplated in this act, they shall become the property of the irrigation district; and thereafter all funds necessary for repairs upon said canal, ditch or reservoir, and for keeping the same in order, or for altering or enlarging the same may be levied by a tax upon the lands benefited, the landholders in the district to vote upon the same in the manner heretofore provided for in this act. And in case of any sudden emergency, caused by inundation or otherwise, said trustees are hereby authorized and empowered to make such repairs, or take such measures as they may deem necessary to preserve the canals, or ditches, or other works of said company or district, and for payment of the expenses so increased, the trustees are hereby authorized and empowered to levy a tax for the necessary amount upon all the lands of said district benefited by such canals or ditches, and said tax may be collected in the same manner and at the same time, if necessary, as provided for the collection of other taxes in said district.

When to become the property of irrigation district.

Tax may be levied for repairs.

Proceedings in case of sudden emergency.

SEC. 16. All property or money belonging to any irrigation district, in the hands of the trustees to be expended by them under the provisions of this act, is hereby exempted from all city, county and Territorial taxes.

Property exempt from taxation.

SEC. 17. After any canal or ditch shall have been laid out under this act, or under any special charter where other provision has not been made, the trustees or company may agree with the owners of land through which it will pass for the purchase of so much thereof, as may be necessary for the making of the canal or ditch, and the appurtenances thereto belonging.

Trustees may purchase lands for canal or ditch.

SEC. 18. In every case where the owner of the land so required, shall absent himself from the county, or shall not, from any cause, be capable in law so to agree, or shall refuse to agree, or ask an exorbitant price, the value of such land and the damages to the owner thereof shall be ascertained in the following manner:

Proceedings in case owners of land absent or cannot agree with trustees as to price.

1. The owner of or claimant to such land and the trustees may each select a referee, and in case of disagreement they two may select a third, and these referees shall proceed to determine the value of the land under controversy, and assess the amount of damages, if any, which each owner of lands or improvements has sustained, or will sustain, in consequence of the canal or ditch.

2. The appraisal, with a description of the land so appraised, shall be acknowledged by the referees signing it, before the clerk of the county court of the county in which the lands are situated, and when so acknowledged, it shall be filed in the said clerk's office within ten days after it shall have been made. In case the occupant or claimant shall refuse or neglect to select a referee as herein provided, the trustees may petition the district court of the district in which the land is situated, for the appointment of three or more commissioners to condemn the land and fix and determine the damages; said commissioners to be appointed upon such notice to the complainant or occupant as said court shall direct. Said commissioners shall report to said court their award and determination for approval or disapproval. The motion for approval of said award shall be heard on such notice as the court shall direct.

When title to
vest in the com-
pany.

SEC. 19. The trustees, upon payment to the rightful claimant of the several sums assessed in the appraisal so made, or upon making a tender thereof when the same shall be refused, shall be entitled to enter upon the lands described in the appraisal, and have and hold the same for the use and benefit of such irrigation district forever.

When trustees
may enter on
lands without
payment.

SEC. 20. If on any parcel of the lands so described there shall be no person then living, authorized to receive payment for the damages assessed for such parcel, and such damages shall not have been lawfully demanded within ten days after the filing of such appraisal, the board of trustees may enter thereon without payment or tender of such damages, but subject to such payment whenever the same shall be thereafter lawfully required.

Penalty for in-
juring property
of company.

SEC. 21. If any person shall break, injure, or destroy any bank, dam, flume, waste weir, lock or gate on said canal or ditch, or any of the appurtenances belonging thereto or in use upon the same, or take water from the said canal or ditch, except by direction of proper officers, such person so offending shall for every such offense be liable to a civil suit for the recovery of damages, to be prosecuted for, before any court having jurisdiction, by any taxpayer in the irrigation district; and shall also be subject to indictment and, upon conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both fine and imprisonment, at the discretion of the court.

What damages
company liable
for.

SEC. 22. All companies or districts organized under the provisions of this act shall be liable for any damages which may occur by the breakage of any canal or ditch.

When any land in an irrigation district is benefited or damaged by the company's canals or ditches from soakage or other incidental cause, and the owner of said land and the company cannot agree as to the amount of the benefit or damage, the matter in dispute, as well as the question of damage through breakage, may be referred and decided as provided in the preceding section of this act. No irrigation company organized under the laws of this Territory shall be entitled to divert the waters of any stream to the injury of any irrigation company or person holding a prior right to the use of said waters, and all cases of dispute arising from such unlawful division, may also be referred and decided as provided in Section 18 of this act.

Must not use waters when another may have acquired a prior right.

SEC. 23. Nothing in this act shall be so construed as to interfere with the right of the Legislative Assembly to repeal, alter or amend the same at pleasure.

Right reserved to Legislative Assembly.

SEC. 24. That persons who have constructed canals, ditches, or dams, and taken out water for irrigation purposes before the passage of the act to which this act is amendatory, are hereby authorized to organize under the provisions of said act, and to enjoy all the rights, powers and privileges guaranteed therein; *Provided*, They shall proceed in the same manner as is provided for the organization of new companies.

Persons who have constructed canals, etc., before the passage of this act may organize under it.

SEC. 25. Nothing in this act shall be so construed as to prevent any association of persons incorporating under the laws of this Territory relating to private corporations for general purposes.

SEC. 26. All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 13, 1884.

CHAPTER I.

OF FILLMORE CITY.

AN ACT amending an Act to Incorporate Fillmore City, Millard County, approved January 12. 1867.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Sections

1 and 7 of an Act to Incorporate Fillmore City, Millard County, (approved January 12, 1867,) are hereby repealed and the following substituted in lieu thereof:

SEC. 2. All that portion of Millard County embraced in the following boundaries, to-wit: beginning at a point two miles due east of the southeast corner of the public square in said city, thence south two miles, thence west four miles, thence north four miles, thence east four miles, thence south two miles, to the place of beginning, shall be known and designated under the name and style of Fillmore City, and the inhabitants thereof are hereby constituted a body corporate and politic by the name aforesaid and may have and use a common seal which they may change and alter at pleasure.

SEC. 3. The city council shall have authority to levy and collect taxes for city purposes upon all taxable property real and personal within the limits of the city, not to exceed one-half of one per cent. per annum upon the assessed value thereof, and may assess, and collect, and expend the necessary taxes to furnish the city with water for irrigation and other purposes, and to regulate and control the same for the use and benefit of the inhabitants thereof, and may enforce the payment of taxes in any manner to be provided for by ordinance not repugnant to the Constitution of the United States or the laws of this Territory.

Approved March 13, 1884.

CHAPTER LI.

OF LAWS OF UTAH.

AN ACT amending Section 9, of Chapter XXI., of the Laws of Utah of 1880, and Section 19, of Chapter VIII., Laws of 1878.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 9

of Chapter XXI. of the Laws of Utah of 1880, be and the same is hereby repealed and the following substituted in lieu thereof, to-wit: On or before the thirty-first day of January in each year the collector of each county shall settle with the clerk of the county court and make full payment into the county treasury of all taxes due. If any tax remain unpaid to the collector on the said thirty-first day of January, he shall have in his own right a right of action against each delinquent taxpayer as on an express contract for the direct payment of money, and no taxable property of such delinquent shall be exempt from execution and sale on a judgment in such cases. It shall be the duty of the auditor of public accounts to keep an account with the Territorial treasurer, charging him with the amount and kind of funds paid to him, and crediting him with the warrants redeemed by him. The auditor of public accounts shall also keep an account with the county collector of each county, charging him with the amount of Territorial and school taxes assessed each year in his county, less his compensation for assessing and collecting the same, and credit him with the amount of the apportionment of school taxes for his county, and with the amount paid into the Territorial treasury.

Collec.or must settle on or before January 31st, annually.

If any tax remain unpaid has right of action against delinquent taxpayer.

Auditor of public accounts to keep account with Territorial treasurer and county collectors.

SEC. 2. The assessor and collector, or the assessor in counties where that office is separate and distinct from the office of collector, may by seizure and sale of any personal property owned by the person against whom the tax is assessed, at the time of making the assessment or at any time subsequent thereto, collect the taxes assessed on all personal property, when the person against whom such taxes are assessed has not sufficient real estate upon which such taxes are a lien to secure the same, unless such person give the assessor security to pay the same when due.

When assessor and collector may collect taxes at time of assessment, or at any time subsequent thereto.

SEC. 3. The provisions of Section 1 of this act shall take effect on and after May thirty-first, 1884, and of Section 2 from and after its approval.

Approved March 13, 1884.

CHAPTER LII.

CHANGE OF NAMES.

AN ACT changing the names of Hans Olsen, Lous Strusberg, Alexander Hedquist, Olof Andehlin, Christen Anderson, and John Conrad Naile.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the name of Hans Olsen of Richfield, Sevier County, be and the same is hereby changed to Hans O. Hansen. That the name of Lous Strusberg of Tooele County be and the same is hereby changed to Louis Strasburg. That the name of Alexander Hedquist of Utah County be and the same is hereby changed to Alexander S. Anderson. That the name of Olof Andehlin of Manti, Sanpete County, be and the same is hereby changed to Olofa Andelin. That the name of Christen Anderson of Ephraim, Sanpete County, be and the same is hereby changed to Christen Franson. That the name of John Conrad Naile be and the same is hereby changed to John Conrad Naegle; and that any and all legal rights and obligations existing in the respective names of Hans Olsen, Lous Strusberg, Alexander Hedquist, Olof Andehlin, Christen Anderson, and John Conrad Naile be and the same are hereby continued in the respective names of Hans O. Hansen, Louis Strasburg, Alexander S. Anderson, Olofa Andelin, Christen Franson, and John Conrad Naegle.

Approved March 13, 1884.

CHAPTER LIII.

OF LOGAN CITY.

AN ACT amending "An Act to Incorporate Logan City," approved January 17, 1866.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That Section 31 of "An Act to Incorporate Logan City," approved January 17, 1866, be and the same is hereby amended so as to read as follows: SEC. 31. The city council of said city shall have power by ordinance and enforcement thereof to license, tax, and regulate, or to absolutely prohibit, the manufacture, sale, or giving away in any quantity of spirituous, vinous, fermented, or other intoxicating liquors; *Provided*, That if any person, corporation or association of persons is licensed or permitted within said city to carry on the business in whole or in part mentioned in this section then any other person, corporation, or association of persons not prohibited by the laws of this Territory, may carry on said business in like manner and under like restrictions and regulations.

SEC. 2.. That Section 33 of said act be and the same is hereby amended so as to read as follows: SEC. 33. The city council of said city shall have power to license, tax, and regulate tavern and hotel keepers, boarding, victualing or coffee houses and restaurants or the keepers thereof.

SEC. 3. That Section 35 of said act be and the same is hereby amended so as to read as follows: SEC. 35. The city council of said city shall have power by ordinance and enforcement thereof to license, tax, and regulate the business of keeping or furnishing for use billiard or pool tables, pin alleys, nine or ten pin alleys, table and ball alleys or shooting galleries; to suppress or restrain all disorderly houses, to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming or any kinds of gambling; to prevent any riot, noise, disturbance or disorderly assemblages; and to restrain and punish for vagrancy, mendicancy, begging and prostitution.

Approved March 13, 1884.

CHAPTER LIV.

OF CRIMINAL CASES IN JUSTICE'S COURTS.

AN ACT Revising the Proceedings in Justices' Courts, and providing for Appeals to District Courts in Criminal Cases.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah, as follows:

CHAPTER I.

Complaint, Warrant, Plea and Change of Venue.

How proceedings and actions may be commenced.

SECTION 1. All proceedings and actions before a justice's court, for a public offense of which such courts have jurisdiction, may be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person and property, as to enable the defendant to understand distinctly the character of the offense complained of and to answer the complaint. The justice must note the time of filing the complaint by endorsement thereon; *Provided*, That police officers on duty may arrest any offender at the time or immediately after the commission of the offense, and bring him before the magistrate, who may direct his trial or examination to proceed, though no complaint has been filed; *Provided further*, That when a defendant is arrested without warrant as provided in this section, a sworn complaint must be immediately filed with the magistrate, or an accusation made and entered on the minutes, specifying the charge against the defendant, as provided in this section.

Proviso.

Additional proviso.

Warrant to be issued.

SEC. 2. If the justice of the peace is satisfied that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

Territory of Utah, }
County of——— }

"The people of the Territory of Utah, to any sheriff, constable, marshal, or policeman in this Territory: Com-

plaint upon oath having been this day made before me——, justice of the peace, by C. D. that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded to arrest the above named E. F. and bring him before me forthwith, at (naming the place.)

Form of warrant.

Witness my hand at——, this——day of——, A. D. 18—.

A. B.

Justice of the Peace.”

SEC. 3. A docket must be kept by the justice of the the peace, in which must be entered each action, and the proceedings of the court therein.

Docket must be kept.

SEC. 4. There are three kinds of pleas to a complaint; a plea of:

Kind of pleas to a complaint.

1. Guilty;

2. Not guilty;

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.

SEC. 5. Every plea must be oral and entered in the minutes. If the defendant pleads guilty, the court may, before entering such plea or pronouncing judgment examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury.

Pleas must be oral and entered in the minutes.

The court may hold defendants to answer an indictment, when.

SEC. 6. Upon a plea other than a plea of guilty, if the defendant waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

When court must proceed to try the case.

SEC. 7. A change of the place of trial may be had at any time before the trial commences:

When change of the place of trial may be had.

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or another precinct in the same county, or to another justice of the same city.

2. When it appears by affidavit that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the precinct, the cause must be

transferred to a justice of a precinct in the same county where the same prejudice does not exist.

SEC. 8. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Trial may be postponed.

SEC. 9. Before the commencement of a trial in a justice's court, either party may upon good cause shown, have a reasonable postponement thereof.

Defendant must be present.

SEC. 10. The defendant must be personally present before the trial can proceed.

Defendant may demur, when.

SEC. 11. The defendant may demur to the complaint when it appears upon the face thereof:

1. That it does not conform to the requirements of Section 1 of this act.

2. That the facts stated do not constitute a public offense.

If demurrer is sustained, new complaint must be filed.

SEC. 12. If the demurrer be sustained a new complaint must be filed within such time not exceeding one day as the justice may name; if such new complaint be not filed the defendant must be discharged.

How officer must serve warrant.

SEC. 13. The officer who receives the warrant must serve the same by arresting the defendant, if in his power to do so, and bring him without unnecessary delay before the justice who issued the same.

CHAPTER II.

Formation of the Jury.

When trial by jury deemed to be waived.

SEC. 16. A trial by jury shall be deemed to be waived unless a jury be demanded by the defendant. If he demand a jury, it shall be formed in the manner provided in this Chapter.

Jury to consist of six persons. Qualifications of.

SEC. 17. The jury in a criminal case tried before a justice of the peace, shall consist of six persons, having the following qualifications:

1. They shall be male citizens of the United States over the age of twenty-one years; and
2. Able to read and write the English language; and
3. Residents of the precinct at least six months before being actually called to serve; and
4. Taxpayers in the Territory; and
5. Of reputed sound mind and discretion and not so disabled in body as to be unable to serve.

SEC. 18. The court must issue a venire to the sheriff, constable, or city marshal of the jurisdiction, requiring such officer to summon as many persons, competent to act as jurors as the court may deem necessary; and from the persons so summoned shall be selected the persons to try the case, *Provided*, That if the number first summoned shall become exhausted by challenge or otherwise, before the jury is completed, the court must issue another venire requiring the officer to summon such additional number as may be deemed necessary, and so on until the jury is completed.

Court may issue venire requiring officer to summon persons to act as jurors.

Proviso.

SEC. 19. Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned and of the time and place at which their attendance is required, but no juror shall be summoned from the bystanders.

Jurors may be summoned orally.

SEC. 20. The officers summoning such jurors must, at or before the time fixed in the venire for their appearance, return it to the court with a list of the persons summoned endorsed thereon.

Officer must return venire to the court with endorsement.

SEC. 21. When an incorporated city comprises two or more precincts, jurors may be summoned from any portion of such city, regardless of the particular precinct in which they reside, and may serve in any precinct of such city.

Jurors may be summoned from any part of incorporated city.

SEC. 22. A person is not competent to act as a juror:

Who is not competent to act as juror.

1. Who does not possess the qualifications prescribed by Section 17, Chapter II. of this act.
2. Who has been convicted of malfeasance in office or any felony or other high crime.
3. Who is an officer or soldier of the United States or a person subject to their military control.

SEC. 23. A person is exempt from liability to act as a juror if he be:

Who is exempt from liability to act as a juror.

1. A judicial or civil officer of the United States, or of the Territory of Utah.
2. A person holding a county office.

3. An attorney and counselor-at-law.
4. A person editing a newspaper or periodical.
5. A teacher in a college, academy or school.
6. A practicing physician or surgeon.
7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution.
8. Engaged in the performance of duty as officer or attendant of a county jail or the Territorial prison.
9. An express agent, mail carrier, telegraph operator, miller, or a keeper of a public ferry or toll gate.
10. A dispensing druggist of a prescription drug store.

11. A superintendent, engineer, conductor, fireman or station agent of a railroad.

Person exempt
may serve, when

SEC. 24. A person summoned as a juror in a criminal case, in a justice's court, entitled to exemption under the provisions of the preceding section, may nevertheless serve if he be otherwise competent, and do not insist upon his right of exemption.

When juror can
be excused.

SEC. 25. A juror cannot be excused by the court for slight or trivial cause, or for hardship or inconvenience to his business, but only when material injury or destruction to his property, or that of the public entrusted to him is threatened, or when his own health, or the sickness or death of a member of his family requires his absence.

What persons
exempt must
state under oath.

SEC. 26. If a person exempt from liability to act as a juror, as provided in Section 23 of this Chapter be summoned as a juror, he may state to the court under oath his office, occupation or employment; and if it appear from such statement that he is entitled to exemption he may be excused by the court.

Challenge to
jurors.

SEC. 27. The provisions of Chapter I., of Title VI. of "An Act regulating the mode of Procedure in Criminal Cases," approved February 22, 1878, and amended in 1884, relative to challenging jurors, shall govern in justices' courts so far as the same are applicable to proceedings in criminal cases in said courts.

CHAPTER III.

The Trial.

Oath to be ad-
ministered to
jury.

SEC. 30. The jury having been impaneled the court must administer to them the following oath: "You do

swear that you will well and truly try this issue between the people of the Territory of Utah (or between the city of—— as the case may be) and A. B., the defendant, and a true verdict render according to the evidence.”

SEC. 31. After the jury are sworn they must sit together and hear the proofs and allegations of the parties which must be delivered in public, and in the presence of the defendant.

Jury must sit together in presence of defendant.

SEC. 32. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

Court must decide questions of law, etc.

SEC. 33. After hearing the proofs and allegations the jury may decide in court, or may retire for consideration. If they do not immediately agree an officer must be sworn to the following effect: “You do swear that you will keep this jury together in some quiet and convenient place, that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.”

Jury may decide in court or may retire for consideration

Officer must be sworn to take charge of jury.

SEC. 34. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered, in the minutes.

Verdict must be publicly delivered.

SEC. 35. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

When several defendants are tried, verdict may be rendered as to one or more.

SEC. 36. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

Jury cannot be discharged until they have agreed, unless.

SEC. 37. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on until a verdict is rendered.

If jury discharged the court may proceed again to the trial.

SEC. 38. If a juror be incapacitated by sickness for attendance through the trial, another juror may be summoned and the trial commenced over again, or the jury discharged and a new jury impaneled.

If juror incapacitated by sickness, another may be summoned, etc.

CHAPTER IV.

New Trial and Arrest of Judgment.

Defendant may
move for new
trial, etc.

SEC. 41. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

When new trial
may be granted.

SEC. 42. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had.

2. When the jury has received any evidence out of court.

3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law, during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

Arrest of judgment may be
founded on defect in complaint; effect of.

SEC. 43. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

If judgment not
arrested, or new
trial granted,
judgment must
be pronounced.

SEC. 44. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed, and entered in the minutes of the court.

CHAPTER V.

The Judgment and Its Execution.

SEC. 47. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment. The judgment may require the defendant:

1. To pay a fine; or,
2. To be imprisoned; or,
3. To pay a fine and the costs of prosecution; or,
4. To pay a fine and also to be imprisoned; or,
5. To pay a fine and the costs of prosecution and also to be imprisoned.

SEC. 48. A judgment requiring the defendant to pay a fine, or a fine and the costs of prosecution, may also direct that he be imprisoned at hard labor until such fine, or such fine and costs, as the case may be, are paid, in the proportion of one day's imprisonment for every dollar of the fine and costs.

SEC. 49. A judgment that the defendant pay a fine, or a fine and costs, may be enforced by execution as in civil cases.

SEC. 50. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if it appear to the court that the prosecution was malicious or without probable cause, it may order the complaining witness to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

SEC. 51. If the complaining witness does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

SEC. 52. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed the

Judgment.

Judgment requiring payment of fine and costs may also direct imprisonment at hard labor.

Judgment requiring payment of fine, how enforced.

Defendant, when acquitted must be immediately discharged. Court may order complaining witness to pay costs, when.

Judgment against complaining witness must be enforced, how.

Appointing time for judgment.

court may hold the defendant to bail to appear for judgment. Unless such postponement is demanded it shall be deemed to be waived.

When judgment of fine only is rendered, defendant must be discharged.

SEC. 53. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Proceedings when judgment of imprisonment is entered.

SEC. 54. When a judgment of imprisonment is entered, a certified copy thereof or an order of commitment reciting the facts of the conviction and judgment must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for the execution of the judgment.

Defendant not to be discharged until fine and costs are paid.

SEC. 55. When a judgment is entered imposing a fine, or a fine and costs, and ordering the defendant to be imprisoned until the fine, or fine and costs, are paid, a certified copy of the judgment or an order of commitment reciting the facts of the conviction and judgment may be delivered to the officer who must hold the defendant in custody during the time specified in the judgment, unless the fine, or fine and costs, are sooner paid. In no case must the total amount of fine and costs be as great as three hundred dollars.

Defendant must be discharged upon payment of the fine, except, etc.

SEC. 56. Upon payment of the fine, or fine and costs, the officer must discharge the defendant, if he is not detained for any other legal cause, and deliver the money to the justice, who shall apply it to the payment of the expenses of the prosecution, and pay over the residue, if any, within thirty days to the county or city treasurer, according as the offense is prosecuted for the violation of a Territorial statute or city ordinance. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this Chapter.

CHAPTER VI.

Bail.

Defendant may be admitted to bail at any time.

SEC. 59. The defendant at any time after his arrest, and before conviction, may be admitted to bail.

SEC. 60. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Admission to bail is an order discharging defendant.

SEC. 61. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that the bail will pay to the people of this Territory a specified sum.

The taking of bail is the acceptance of a sufficient undertaking.

SEC. 62. The defendant, at any time after the making of an order admitting him to bail, instead of giving bail, may deposit with the magistrate or court, in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

Defendant may deposit amount of bail.

SEC. 63. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

After defendant has given bail he may deposit amount of, etc.

SEC. 64. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the court may apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Court may apply money on deposit to payment of fine, etc.

Surrender of the Defendant.

SEC. 65. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner.

The bail may surrender defendant at any time before forfeiture.

First—A certified copy of the undertaking of the bail must be delivered to the officer who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender.

Manner of.

Second—Upon the undertaking and the certificate of the officer, the court in which the action is pending must order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

SEC. 66. For the purpose of surrendering the defendant, the bail at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

The bail may arrest defendant for the purpose of surrendering him.

If money has been deposited, it must be returned if defendant surrender himself.

SEC. 67. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender.

Forfeiture of the undertaking of Bail or of the deposit of Money.

When bail is forfeited.

SEC. 68. If, without sufficient excuse defendant neglects to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required or to surrender himself in execution of the judgment the magistrate must direct the fact to be entered upon the minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail, appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Court may direct the forfeiture to be discharged, when.

Prosecuting attorney may proceed by action against bail, when.

SEC. 69. If the forfeiture is not discharged, as provided in the last section, the prosecuting attorney may at any time, after the adjournment of the court proceed by action only against the bail upon their undertaking.

Money deposited as bail, when forfeited, must be paid into the county treasury.

SEC. 70. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted the magistrate with whom it is deposited must within five days after the bail is forfeited pay over the money deposited into the county treasury of the county in which the offense was committed.

Manner and form of giving bail.

SEC. 71. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form :

An order having been made on the——day of——, A. D. 18—, by A. B., a justice of the peace of—— County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense) upon which he has been admitted to bail in the sum of——dollars; we, E. F. and G. H. (stating their

place of residence and occupation,) hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Utah the sum of—dollars (inserting the sum in which the defendant is admitted to bail).

SEC. 72. The qualifications of bail are as follows:

First—Each of them must be a resident, and householder, or freeholder within the Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county in which the offense was committed where bail is offered;

Qualification of bail.

Second—They must each be worth the amount specified in the undertaking exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

SEC. 73. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

SEC. 74. Upon the allowance of bail, and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge upon the delivery of which to the proper officer the defendant must be discharged.

Defendant to be discharged upon allowance of bail.

CHAPTER VII.

Subpoenas.

SEC. 78. The process by which the attendance of witnesses before a court or magistrate is required is a subpoena.

What is a subpoena.

Either party entitled to subpoenas, etc.

SEC. 79. On the application of either party, the justice must issue a subpoena for such witness or witnesses as are desired by the applicant; *Provided*, That names of all the witnesses desired by both parties, may be included in the same subpoena.

Form of subpoena.

SEC. 80. A subpoena must be substantially in the following form: The people of the Territory of Utah to (naming the witness or witnesses): You are required to appear before me,——, a Justice of the Peace of—— precinct, in—— county, at (naming the place) on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the Territory of Utah, against——.

Given under my hand this—— day of——, A. D. 18——.

——, Justice of the Peace.

When books, papers, etc., are required.

If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena.

“And you are required also, to bring with you the following: (describing intelligibly the books, papers or documents required.)”

Who may serve subpoena.

SEC. 81. A subpoena may be served by any person over twenty-one years of age, but a peace officer must serve in any county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing them of its contents.

Persons living out of the county not obliged to attend court unless.

SEC. 82. No person is obliged to attend as a witness before a justice's court, out of the county in which the witness resides, unless the justice shall indorse on the subpoena an order for the attendance of the witness; *Provided*, Such indorsement shall not be made on the subpoena unless the party desiring the witness shall first file with the justice an affidavit showing that the evidence of the witness is material, and that his attendance at the trial is desired.

Proviso.

The justice may require any competent person to act as interpreter.

SEC. 83. The justice may issue an order requiring any competent person to appear before the court at or during a trial or proceeding and act as interpreter. Said interpreter must be sworn to the effect that he will well and truly, to the best of his ability, discharge the duties of interpreter, under the direction of the court. The manner of compelling compliance on the part of the interpreter is the same as that provided in the case of witnesses.

CHAPTER VIII.

Contempts and the Punishments thereof.

SEC. 84. A justice may punish, as for contempt, persons guilty of the following acts, and no other:

Justice may punish for contempt, when.

1. Disorderly, contemptuous or insolent behavior towards the justice while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him.

4. Disobedience to a subpoena duly served, or refusing to be sworn, or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

SEC. 85. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made reciting the facts, as they occurred, and adjudging that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

Contempt in presence of justice may be punished summarily.

SEC. 86. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may, thereupon, discharge him, or may convict him of the offense.

When contempt is not committed in presence of justice, a warrant may be issued.

SEC. 87. A justice may punish for contempt by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment, one day.

Penalty for contempt.

CHAPTER IX.

Appeals to District Courts.

Defendant may
appeal to dis-
trict court.

SEC. 90. Any defendant in a criminal action tried before a justice of the peace, who is dissatisfied with the final judgment of such justice, may appeal therefrom to the district court of the district embracing the county where such justice's court is held, at any time within thirty days from the rendition of such judgment.

Appeal, how
taken.

SEC. 91. The appeal is taken by filing with the justice an affidavit by or on behalf of the appellant, in which the alleged errors of the proceedings complained of are stated, and that the affiant verily believes that injustice has been done, and by filing an undertaking by or on behalf of the defendant, in at least double the amount of the fine, or of the fine and costs, as the case may be, with at least two good and sufficient sureties, and conditioned that he will appear at the first term of the court thereafter to which appeal is taken.

Witnesses may
be required to
enter into recog-
nizance for their
appearance.

SEC. 92. The justice may cause all material witnesses to enter into recognizance to appear at the time and place of trial, and shall forthwith transmit all papers in the case together with a certified copy of the entries in his docket, to the clerk of the district court to which the case is appealed.

Appeal cannot
be dismissed for
insufficiency,
etc.,

SEC. 93. No appeal shall be dismissed for any insufficiency or informality in either the affidavit or undertaking, or both, if the defendant file a sufficient affidavit or undertaking in pursuance of any order of the court.

If appeal is dis-
missed, copy
must be remitted
to justice.

SEC. 94. If the appeal is dismissed, a copy of the order of dismissal must be remitted to the justice, who may proceed to enforce the judgment.

Appeal vacates
judgment.

SEC. 95. The appeal vacates the judgment appealed from, and the case must be tried *de novo* in the district court.

CHAPTER X.

General Provisions.

- SEC. 98. In criminal cases, the jurisdiction of justices of the peace extends to the limits of their respective counties. Jurisdiction of justices of the peace.
- SEC. 99. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this act. Rules for determining competency of witnesses.
- SEC. 100. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties. Husband and wife not competent witnesses against each other.
- SEC. 101. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give his consent shall not in any manner prejudice him nor be used against him on the trial or proceeding. Defendant without his consent is not a competent witness against himself.
- SEC. 102. A justice of the peace may depute, in writing, any suitable and discreet person to act as constable, when no constable is at hand, and the nature of the business requires immediate action. Justice of the peace may depute constable.
- SEC. 103. A peace officer is a sheriff of a county, a constable of a precinct, a marshal or a policeman of any incorporated city. Who is a peace officer.
- SEC. 104. The proceedings relative to binding any person over to keep the peace are specified in Chapter III. of Title I. of "An Act Regulating the Mode of Procedure in Criminal Cases," approved February 22, 1878, and amended in 1884. Proceedings in relation to binding persons over to keep the peace, where specified.
- SEC. 105. The proceedings relative to cases in which a justice sits as a committing magistrate are also specified in the act referred to in the preceding section; all expenses incurred in such cases are hereby declared to be a charge against the county in which the examination is held. The proceedings relating to cases in which justice sits as committing magistrate, where specified, etc.
- SEC. 106. The provisions of this act have not necessarily any application to procedure in civil cases in justices' courts, and all civil actions in such courts must be conducted according to the provisions of the laws rela-

tive thereto, and nothing in this act shall be construed as being in conflict with any of the provisions of such laws nor of the provisions of any law relative to proceedings in any other than justices' courts.

When act takes effect.

SEC. 107. This act shall take effect at twelve o'clock noon on the first day of August, A. D. 1884, and from and after that time all prosecutions for public offenses, in all courts held by justices of the peace, police justices, and mayors and aldermen sitting as justices of the peace, or police justices, whether such prosecutions be brought under the ordinances or by-laws of any incorporated city, or under the laws of this Territory, must be conducted according to the provisions of this act.

SEC. 108. All laws and parts of laws in conflict with this act are hereby repealed.

Approved March 13, 1884.

CHAPTER LV.

OF CIVIL PROCEDURE.

AN ACT revising the Code of Civil Procedure of Utah Territory.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah as follows:

Preliminary Provisions.

When act takes effect.

SECTION 1. This Code takes effect at twelve o'clock, noon, on the first day of August, eighteen hundred and eighty-four.

Not retroactive.

SEC. 2. No part of it is retroactive, unless expressly so declared.

How construed.

SEC. 3. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this Territory, respecting the subjects to which it relates,

and its provisions and all proceedings under it, are to be liberally construed, with a view to effect its objects and to promote justice.

SEC. 4. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Construed as continuations.

SEC. 5. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this Code as far as applicable.

Actions, etc., not effected by this code.

SEC. 6. When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Code goes into effect, and the same or any limitation is prescribed in this Code, the time which has already run shall be deemed part of the time prescribed as such limitation by this Code.

Limitations shall continue to run.

SEC. 7. Holidays, within the meaning of this Code, are every Sunday; the first day of January; the twenty-second day of February; the thirtieth day of May, commonly called Decoration Day; the fourth day of July; the twenty-fourth day of July, commonly called Pioneers' Day; the twenty-fifth day of December; and all days which may be set apart by the President of the United States, or the Governor of Utah Territory, by proclamation, as days of fast or thanksgiving.

Holidays.

SEC. 8. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last day, unless the last day is a holiday, and then it is also excluded.

Computation of time.

SEC. 9. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed; *Provided*, That nothing in this or the preceding section shall be so construed as to in any manner change, alter or modify the time of the maturity of negotiable instruments as provided in an act entitled "An Act in Relation to Negotiable Instruments," approved March 9, 1882.

Certain act not to be done on holidays.

SEC. 10. When the seal of a court, or public officer, is required by law to be affixed to any paper, the word seal includes an impression of such seal upon the paper alone, as well as upon wax or a wafer affixed thereto. In all other cases the word seal may include a scroll printed or written.

Seal defined.

Joint authority. SEC. 11. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Words and phrases. SEC. 12. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Terms defined. SEC. 13. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it and witnessed by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

Property defined. 1. The word "property" includes both real and personal property.

Real property. 2. The words "real property" are co-extensive with lands, tenements and hereditaments, water rights, possessory rights and claims.

Personal property. 3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Month. 4. The word "month" means a calendar month, unless otherwise expressed.

Will. 5. The word "will" includes codicils.

Writ. 6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

State. 7. The word "State" when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories.

SEC. 14. No statute, law or rule, is continued in force because it is consistent with the provisions of this

Code on the same subject; but in all cases provided for by this Code, all statutes, laws and rules heretofore in force in this Territory, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided; nor does it affect any private statute not expressly repealed.

Statutes, etc., inconsistent with code repealed.

SEC. 15. This act, whenever cited, enumerated, referred to or amended, may be designated simply as "The Code of Civil Procedure," adding, when necessary, the number of the section.

This act how cited, enumerated, etc.

SEC. 16. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

Civil and criminal remedies not merged.

PART I.

OF COURTS OF JUSTICE.

TITLE I.

ORGANIZATION AND JURISDICTION.

CHAPTER I.

Courts of Justice in General.

- The courts. SEC. 17. The following are the courts of justice of this Territory:
1. The supreme court.
 2. The district courts.
 3. The probate courts.
 4. The justices' courts.
- Courts of record. SEC. 18. The courts enumerated in the first three subdivisions of the preceding section are courts of record.

CHAPTER II.

Supreme Court.

- Jurisdiction. SEC. 19. The jurisdiction of this court is of two kinds:
1. Original; and,
 2. Appellate.
- Original jurisdiction. SEC. 20. Its original jurisdiction extends to the issuance of writs of mandate, certiorari, prohibition, habeas corpus, and all writs necessary to the complete exercise of its appellate jurisdiction.

SEC. 21. Its appellate jurisdiction extends to a review of all cases removed to it under such regulations as are or may be prescribed by law, from the decisions of the district courts.

Appellate jurisdiction.

SEC. 22. The court may reverse, affirm, or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. Its judgment must be remitted to the court from which the appeal was taken. The decisions of the court shall be given in writing; and in giving a decision, if a new trial be granted, the court shall pass upon and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case.

May reverse, affirm, or modify, etc., remit-tur.

Decisions in writing.

SEC. 23. The presence of two justices of the supreme court is necessary for the transaction of business, but one of the justices may adjourn the court from day to day or to a particular day, or until the next term.

Presence of two Justices.

SEC. 24. The concurrence of two justices of the supreme court is necessary to pronounce a judgment; if two do not concur, the case must be re-heard.

SEC. 25. There must be held in each year two terms of the supreme court for the hearing of causes, to be held at the capital of the Territory, at such times as the Governor thereof may by proclamation fix.

Terms of the Supreme court.

CHAPTER III.

District Courts.

SEC. 26. The jurisdiction of the district courts extends:

Jurisdiction.

1. To all civil actions for relief formerly given in courts of equity.

2. To all civil actions in which the subject of litigation is not capable of pecuniary estimation.

3. To all civil actions in which the subject of litigation is capable of pecuniary estimation or which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

4. To actions of forcible entry and detainer to proceedings in insolvency; to actions to prevent or abate a nuisance; to actions of divorce, and for annulment of mar-

riage, and to all such special cases and proceedings as are not otherwise provided for.

5. To the trial of all indictments; said courts shall have the power of naturalization, and to issue papers therefor. Said courts and their judges, or any of them, shall have power to issue writs of mandamus, certiorari, prohibition, *quo warranto*, in their respective districts, and of habeas corpus on petition by or on behalf of any person in actual custody. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

6. Its appellate jurisdiction extends to all cases arising in probate or justices' courts; and to all other matters and cases wherein an appeal to it is or may be allowed by law.

Duration of
Term.

SEC. 27. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

Adjournments.

SEC. 28. The court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Judgments and
orders entered
in vacation.

SEC. 29. Judgments and orders of this court may be entered either in term or vacation.

CHAPTER IV.

Probate Court.

Court in each
County.

SEC. 35. There must be a probate court held in each of the counties.

Jurisdiction of
Probate Court.

SEC. 36. The probate court has jurisdiction:

1. In the settlement of the estates of decedents, and in matters of guardianship and other like matters.

2. In suits of divorce for statutory causes concurrently with the district courts, but any defendant in a suit for divorce commenced in this court shall be entitled, after appearance and before plea or answer, to have said suit removed to the district court having jurisdiction, when said suit shall proceed in like manner as if originally commenced in said district court.

3. To make such orders as may be necessary to the exercise of the powers conferred upon it.

4. To enter land in trust for the use and benefit of the occupants of towns in the various counties, according to the provisions of any law of Congress, and under such rules and regulations as are or may be prescribed by the Legislative Assembly.

SEC. 37. The probate proceedings, records, orders, judgments, and decrees of this court are construed in the same manner, and with like intendments, as the proceedings in courts of general jurisdiction, and to them there is accorded like force, effect, and legal presumptions as to the records, orders, judgments, and decrees of district courts.

Presumptions as to probate proceedings.

SEC. 38. The probate courts shall always be opened for transaction of business, but regular sessions thereof shall be held as follows: In the County of Salt Lake, on the second and fourth Mondays of each month; in the Counties of Cache, Weber, Utah and Sanpete, on the second Monday in each month and in the remaining counties on the second Monday of March, June, September and December of each year; each session shall continue until all the business then ready for a hearing is disposed of.

SEC. 39. The terms of the probate court must be held at the county seat.

CHAPTER V.

Justices' Courts.

SEC. 44. Every justice of the peace must hold a justice's court in the precinct or city for which he is elected or appointed.

Justice must hold court where.

SEC. 45. The civil jurisdiction of these courts within their respective precincts or cities extends:

Civil jurisdiction.

1. To an action arising on contract for the recovery of money only, if the sum claimed is less than three hundred dollars.

2. To an action for damages for injury to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where no issue is raised by the answer involving the plaintiff's title to or possession of the same, if the damages claimed be less than three hundred dollars.

3. To an action for a fine, penalty or forfeiture, less than three hundred dollars, given by statute or the ordi-

nances of an incorporated city where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll or municipal fine.

4. To an action upon a bond or undertaking conditioned for the payment of money, less than three hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due.

5. To an action to recover the possession of personal property, when the value of such property is less than three hundred dollars.

6. To take and enter judgment on the confession of a defendant, when the amount confessed is less than three hundred dollars.

Jurisdiction of. SEC. 46. The justices' courts shall have concurrent jurisdiction with the district courts within their respective precincts and cities:

1. In actions of forcible entry and detainer, where the whole amount of rent and damages claimed is less than three hundred dollars.

2. In actions to enforce and foreclose liens on personal property, where the amount of the liens and the value of the property are each less than three hundred dollars.

Jurisdiction extends to county. SEC. 47. Mesne and final process of justices' courts may be issued to any part of the county in which they are held.

Criminal jurisdiction. SEC. 48. These courts have jurisdiction of the following public offenses, committed within the respective counties in which such courts are established:

1. Petit larceny;

2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties;

3. Breaches of the peace, committing a willful injury to property, and all misdemeanors punishable by a fine less than three hundred dollars, or imprisonment in the county jail or city prison not exceeding six months, or by both such fine and imprisonment.

CHAPTER VI.

General Provisions Respecting Courts and Judicial Officers.

SEC. 50. The sittings of every court of justice are public, except as provided in the next section. Sittings public.

SEC. 51. In an action for divorce, criminal conversation, seduction, abortion, bastardy, rape, and assault with intent to commit rape, the court may, in its discretion exclude all persons who are not directly interested therein, excepting jurors, witnesses and officers of the court; *Provided*, That in any cause the court may, in its discretion, during the examination of a witness, exclude any and all other witnesses in the cause. Limitations on preceding section.

SEC. 52. Every court has power:

1. To preserve and enforce order in its immediate presence; Powers of court respecting the conduct of judicial proceedings.

2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

3. To provide for the orderly conduct of proceedings before it or its officers;

4. To compel obedience to its judgments, orders and process, and to the orders of a judge out of court, in an action or proceeding pending therein;

5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto;

6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code;

7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;

8. To amend and control its process and orders so as to make them conformable to law and justice;

9. To devise and make new process and forms of proceedings consistent with law necessary to carry into effect the powers and jurisdiction possessed by it.

SEC. 53. Every court of record may make rules, not inconsistent with the laws of this Territory, for its Courts of record may make rules.

own government and the government of its officers, but such rules must neither impose any tax or charge upon any legal proceeding, nor give any allowance to any officer for services.

When rules take effect.

SEC. 54. The rules adopted by the supreme court take effect twenty days, and those adopted by other courts ten days, after their publication.

Days on which courts, etc., may be held.

SEC. 55. Courts of justice may be held and judicial business transacted on any day, except as provided in the next section.

Days on which courts shall not be opened, except, etc.

SEC. 56. No court can be opened, nor can any judicial business be transacted, on Sunday, on the first day of January, on the twenty-second day of February, on the thirtieth day of May, on the fourth day of July, on the twenty-fourth day of July, on Christmas or Thanksgiving day, on any day on which the general election is held, or on any legal holiday, except for the following purposes:

1. To give upon their request, instructions to a jury when deliberating on their verdict;

2. To receive a verdict or discharge a jury;

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; *Provided*, That in civil causes orders of arrest may be made and executed; writs of attachment, executions, injunctions and writs of prohibition, may be issued and served; proceedings to recover possession of personal property may be had; and suits for the purpose of obtaining any such writs and proceedings may be instituted on any day.

Court appointed, etc., for those days deemed for next day.

SEC. 57. If any of the days mentioned in the last section happen to be the day appointed for the holding of a court, or to which it is adjourned, it is deemed appointed for, or adjourned to the next day.

Adjournment of court for absence of judge.

SEC. 58. If no judge attend on the day appointed for the holding or sitting of a court, or on the day to which it may have been adjourned, before noon, the clerk shall make an entry thereof in his record, and the marshal, sheriff, or clerk must adjourn the court until the next day at ten o'clock a.m.; and if no judge attend on that day, before noon, the marshal, sheriff, or clerk must adjourn the court until the following day, at the same hour, and so on from day to day, for one week, unless the judge, by written order, directs it to be adjourned to some day certain, fixed in said order, in which case it shall be so adjourned.

Same.

SEC. 59. If no judge attend for one week, and no written order is made, as provided in the last section, the

marshal, sheriff or clerk shall adjourn the session until the time appointed for the holding of the next regular session.

SEC. 60. No recognizance, or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term; but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in Section 58.

Failure of term does not invalidate any recognizance or other instrument, etc.

SEC. 61. In case of such continuance or adjournment, persons recognized or bound to appear at the regular term which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties, if any, shall be liable, in case of their non-appearance, in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat.

Persons held to appear at regular term, must appear at time fixed, as aforesaid.

SEC. 62. The judge or judges authorized to hold or preside at a court appointed to be held in a county, city or town, may, by an order filed with the clerk, and published as he or they may prescribe, direct that the court may be held or continued at any other place in the city, town or county, than that appointed, when war, insurrection, pestilence or other public calamity or the danger thereof, or the destruction or danger of the building appointed for holding court, may render it necessary, and may, in the same manner, revoke the order, and in his or their discretion, appoint another place in the same city, town or county, for holding court.

Judge may in certain cases, change place of holding court.

SEC. 63. When the court is held at a place appointed as provided in the last preceding section, every person held to appear at the court must appear at the place so appointed.

Parties to appear at place appointed.

SEC. 64. If suitable rooms for holding the district courts, and the chambers of the judges of such courts be not provided in the place or places appointed for holding said courts, together with attendants, furniture, fuel, lights, and stationery sufficient for the transaction of the Territorial business, the court may direct the sheriff of the county where the court is to be held to provide such rooms, attendants, furniture, fuel, lights and stationery, and the expenses thereof are a charge against the Territory.

Rooms may be provided, when judge may order.

SEC. 65. Each of the following courts has a seal:

What courts have seals.

1. The supreme court;
2. The district courts;
3. The probate courts.

SEC. 66. The clerk of the court must keep the seal thereof.

Seals, by whom kept.

Seals of court,
to what proceed-
ings affixed,

SEC. 67. The seal of the court need not be affixed to any proceeding therein, or document, except:

1. To a writ;
2. To a certificate of the probate of a will, or of appointment of an executor, administrator, or guardian.
3. To the authentication of a copy of a record or other proceeding of a court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

TITLE II.

JUDICIAL OFFICERS.

CHAPTER I.

Judicial Officers in General.

Residence of
probate judges
and justice.

SEC. 70. Each probate judge shall reside at the county seat of his county, during the term of his office, and every justice of the peace shall reside in the city or precinct in which his court is held.

District judge
may hold courts
in another dis-
trict.

SEC. 71. Whenever the condition of the business in the district court of any district is such that the judge of the district is unable to do the same, he may request the judge of either of the other districts to assist him, and upon such request made, the judge so requested may hold the whole or part of any term or any branch thereof; and when by reason of sickness, or absence from the Territory, or from any other cause, a court cannot be held in any district by the judge thereof, a certificate of that fact must be transmitted by the clerk to the Governor, who may thereupon direct some other district judge to hold such court, and the acts of such judge so holding such court or any branch thereof as above mentioned, shall be of equal force as if he were duly assigned to hold the courts in such district.

CHAPTER II.

Powers of Judges at Chambers.

SEC. 73. District judges, at chambers, may grant all orders and writs which are usually granted in the first instance upon *ex parte* applications and may at chambers hear and dispose of such writs and of motions for new trials, and try and determine writs of habeas corpus, certiorari, mandate and prohibition, and may hear applications to discharge all such orders and writs. In case of vacancy in the office of any district judge, or his absence from the Territory, motions may be made before, and orders granted by, any other district judge.

Powers of district judges at chambers.

SEC. 74. The parties to an action or special proceeding, pending in a court of record, may, with the consent of the judge who is to try or hear it, without a jury, stipulate in writing, that it shall be tried or heard and determined, elsewhere than at the place appointed for holding said court.

Place of hearing actions and proceedings may be changed, when.

The stipulation must specify the place of trial or hearing, and must be filed in the office of the clerk.

Stipulation must specify place of trial and be filed

CHAPTER III.

Disqualifications of Judges.

SEC. 76. No justice, judge, or justice of the peace shall sit or act as such in any action or proceeding:

When disqualified.

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding.

But the provisions of this section shall not apply to the arrangement of the calendar or the regulation of the

order of business, nor to the power of transferring the action or proceeding to some other court.

Not to act as attorney in his own court.

SEC. 77. A judge cannot act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for trial or review in an action or proceeding from which an appeal may lie to his own court.

Certain judges not to act as attorneys.

SEC. 78. A justice of the supreme court, or judge of the district court, cannot act as attorney or counsel in any court except in an action or proceeding to which he is a party on the record.

No judicial officer to have a partner.

SEC. 79. No judge or other judicial officer shall have a partner acting as attorney or counsel in any court of this Territory.

CHAPTER IV.

Incidental Powers and Duties of Judicial Officers.

General powers of judges out of court.

SEC. 82. A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from the court.

Powers of judicial officers as to conduct proceedings before them.

SEC. 83. Every judicial officer has power:

1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

2. To compel obedience to his lawful orders as provided in this Code;

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this Code;

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties.

Same.

SEC. 84. For the effectual exercise of the powers conferred by the last preceding section, a judicial officer may punish for contempt in the cases provided in this Code.

Same.

SEC. 85. The justices of the supreme court, and the judges of the district courts, have power in any part of the Territory, and probate judges and justices of the peace within their respective counties, to take and certify:

1. The proof and acknowledgment of a conveyance of real property, or of any other written instrument;
- 2. The acknowledgment of a satisfaction of a judgment of any court;
3. An affidavit or deposition to be used in this Territory.

CHAPTER V.

Miscellaneous Provisions Respecting Courts and Judicial Officers.

SEC. 88. If an application for an order, made to a judge of the court in which the action or proceeding is pending, is refused in whole or in part, or is granted conditionally, no subsequent application for the same order can be made to any other judge, except of a higher court; but nothing in this section applies to motions refused for any informality in the papers or proceeding necessary to obtain the order, or to motions refused, with liberty to renew the same.

Subsequent applications for orders, when refused.

SEC. 89. A violation of the last preceding section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of the court in which the action or proceeding is pending.

Violation of last section.

SEC. 90. No proceeding in any court of justice, in an action or special proceeding pending therein, is affected by a vacancy in the office of all or any of the judges, or by the failure of a term thereof.

No proceedings affected by vacancy in office of judge, etc.

SEC. 91. Every written proceeding in a court of justice in this Territory shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other.

Proceedings to be in the English language.

SEC. 92. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

Abbreviations and figures.

SEC. 93. When jurisdiction is, by this Code or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by this Code or

Means to be used to execute judicial powers in certain cases.

the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code, or the statute.

TITLE III.

PERSONS SPECIALLY INVESTED WITH POWERS OF A JUDICIAL NATURE.

CHAPTER I.

Of Jurors.

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|----------------------------|--|
| Jury defined. | SEC. 98. A jury is a body of men temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offense, or to try a question of fact. |
| Different kinds of juries. | SEC. 99. Juries are of three kinds:
1. Grand juries;
2. Trial juries;
3. Juries of inquest. |
| Grand jury defined. | SEC. 100. A grand jury is a body of men, fifteen in number, returned in pursuance of law from citizens of the district before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the district. |
| Trial jury defined. | SEC. 101. A trial jury is a body of men returned from the citizens of a particular district before a court or officer of competent jurisdiction, and sworn to try and determine by unanimous verdict a question of fact. |
| Number of a trial jury. | SEC. 102. A trial jury in a district court consists of twelve, and in the justices' courts of six men, unless the parties to the action or proceeding, in other than criminal cases, agree upon a less number. |
| Jury of inquest defined. | SEC. 103. A jury of inquest is a body of men summoned from the citizens of a particular district, before the |

marshal, sheriff or coroner, or other ministerial officer, to inquire of particular facts.

SEC. 104. A person is competent to act as a juror if he be: Who are competent to act as jurors.

1. A male citizen of the United States over the age of twenty-one years; and,

2. Who can read and write in the English language; and,

3. Who resides in, and has resided in the judicial district in which he is called upon to serve, six months next preceding the time he is selected by the probate judge and clerk of the district court, to serve as a juror as provided by law; *Provided*, That the residence required to render a person competent to serve as a juror in a justice's court, or on an inquest, is in the county for a period of six months next preceding the time he is actually called to serve; and, Proviso.

4. Who is a taxpayer in the Territory; and,

5. Who is of a reputed sound mind and discretion, and who is not so disabled in body as to be unable to serve.

SEC. 105. A person is not competent to act as a juror: Who are not competent to act as jurors.

1. Who does not possess the qualifications prescribed by the last preceding section;

2. Who has been convicted of malfeasance in office or any felony or other high crime;

3. Who is an officer or soldier of the United States, or a person subject to their military control.

SEC. 106. A person is exempt from liability to act as a juror if he be: Who are exempt

1. A judicial or civil officer of the United States, or of the Territory of Utah;

2. A person holding a county office;

3. An attorney and counselor at law;

4. A person editing a newspaper or periodical;

5. A teacher in a college, academy or school;

6. A practicing physician or surgeon;

7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution;

8. Engaged in the performance of duty as officer or attendant of a county jail or the Territorial prison;

9. An express agent, mail carrier, telegraph operator, miller or keeper of a public ferry or toll gate;

10. A dispensing druggist of a prescription drug store;

11. A superintendent, engineer, conductor, fireman or station agent of a railroad;

12. A person drawn as a juror in any court of record in this Territory, upon a regular panel, who has served as such within a year; but this exemption shall not extend to a person who is summoned as a juror for the trial of a particular case.

Who may be excused.

SEC. 107. A juror cannot be excused by the court for slight or trivial cause, or for hardship or inconvenience to his business, but only when material injury or destruction to his property, or that of the public entrusted to him is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence.

May transmit affidavit of excuse.

SEC. 108. If a person exempt from liability to act as a juror, as provided in Section 106, be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his office, occupation, or employment; and such affidavit shall be delivered by the clerk to the judge of the court when the name of such person is called, and if sufficient in substance, shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the clerk.

When and how jury list to be prepared.

SEC. 109. In the month of January in each year, the clerk of the district court in each judicial district, and the judge of probate of the county in which the district court is next to be held, shall prepare a jury list from which grand and petit jurors shall be drawn, to serve in the district courts of such district, until a new list shall be made as herein provided. Said clerk and probate judge shall alternately select the name of a male citizen of the United States, possessing the qualifications mentioned in Section 104, and as selected the name and residence of each shall be entered upon the list, until the same shall contain two hundred names, when the same shall be duly certified by such clerk and probate judge; and the same shall be filed in the office of the clerk of such district court, and a duplicate copy shall be made and certified by such officers, and filed in the office of said probate judge.

Jury to be drawn upon the order of the judge.

SEC. 110. Whenever a grand or petit jury is to be drawn to serve at any term of the district court, the judge of such district shall give public notice of the number, time and place of the drawing of such jury, which shall be at least twelve days before the commencement of such term, and on the day and at the place thus fixed, the judge of such district shall hold an open session of his court, and shall preside at the drawing of such jury.

SEC. 111. The clerk of such court shall write the name of each person on the jury lists returned and filed in his office upon a separate slip of paper, as nearly as practicable of the same size and form, and all such slips shall, by the clerk in open court, be placed in a covered box, and thoroughly mixed and mingled; and thereupon the United States marshal, or his deputy shall proceed to fairly draw by lot from said box such number of names as may have previously been directed by said judge.

Jury, how drawn

SEC. 112. If both a grand and petit jury are to be drawn to serve at the same term, the grand jury shall be drawn first. Eighteen names shall be drawn from which to form a grand jury.

Grand jury to be drawn first, when.

SEC. 113. When the drawing shall have been concluded, the clerk of the district court shall issue a venire to the marshal, or his deputy, returnable at such time in the term as the judge may direct, and directing him to summon the persons so drawn, and the same shall be duly served on each of the persons so drawn at least seven days before the commencement of the term at which they are to serve.

Marshal to summon jurors.

SEC. 114. The jurors so drawn and summoned shall constitute the regular grand and petit juries for the term for all cases. And the names thus drawn from the box by the clerk shall not be returned to or again placed in said box until a new jury list shall be made.

Grand and Petit Juries.

SEC. 115. If, during any term of the district court, any additional grand or petit jurors shall be necessary, the same shall be drawn from said box by the United States marshal in open court; but if the attendance of those drawn cannot be obtained in a reasonable time, they may be laid aside, and other names may be drawn in their place, in the same manner.

Additional jurors, how drawn.

SEC. 116. The clerk of the district court must furnish any person applying therefor, and paying the fees allowed by law for the same, a copy of the list of jurors drawn to attend any court.

Clerk must furnish list of jurors, when.

SEC. 117. As soon as he receives the venire, the United States marshal must summon the persons named therein to attend as such jurors, by giving personal notice to each, or by leaving a written notice at his place of residence, with some person of proper age, and must return the venire to the court at the time when it is made returnable, specifying the names of those who were summoned and the manner in which each person was notified. The jurors drawn under Section 115 may be required to appear

Marshal to summon jurors, how.

forthwith or at a time to be named in the venire, as the court may direct, and the officers summoning such jurors shall return the venire as hereinbefore provided.

For justices' courts, how summoned.

SEC. 118. When jurors are required in any justice's court the number required by law must, upon the order of the justice thereof, be summoned by the sheriff, city marshal or constable of the jurisdiction.

How summoned.

SEC. 119. Such jurors must be summoned from the persons resident of the city or precinct, competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Officers' return.

SEC. 120. The officer summoning such juror must, at the time fixed for their appearance, return it to the court, with a list of the persons summoned endorsed thereon.

Juries of inquest, how summoned.

SEC. 121. Juries of inquest must be summoned by the officer before whom the proceedings are had, or any sheriff, or constable, from the persons resident of the county competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

Obedience to summons, how enforced.

SEC. 122. Any juror summoned who willfully, and without reasonable excuse, fails to attend, may be attached and compelled to attend, and the court may also impose a fine, not exceeding one hundred dollars, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard.

Grand jury, how constituted.

SEC. 123. Fifteen persons shall constitute a grand jury, twelve of whom shall constitute a quorum, and when of the jurors summoned no more nor less than fifteen attend, they shall constitute the grand jury. If more than fifteen attend the clerk must call over the list summoned, and the fifteen first answering shall constitute the grand jury. If less than fifteen attend, the panel may be filled to fifteen as provided in Section 115.

How impaneled.

SEC. 124. Thereafter such proceedings shall be had in impaneling the grand jury as are or may be prescribed by law regulating the procedure in criminal cases.

Names of trial jurors, how kept.

SEC. 125. At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned, and the court may then hear the excuses of jurors summoned; the clerk shall then de-

posit the slips or ballots containing the names of the jurors present and not excused in a box to be kept for that purpose.

SEC. 126. When thereafter a civil action is called by the court for trial, and a jury is not waived, such proceedings shall be had in impaneling the trial jury as are prescribed in this Code. If the action be a criminal one, the jury shall be impaneled as prescribed by law regulating the procedure in criminal cases.

Jury to be impaneled as prescribed, how.

SEC. 127. At the time appointed for a jury trial in justices' courts, the list of jurors summoned must be called. If a sufficient number of jurors are in attendance the justice may proceed to impanel the jury.

Proceeding in forming jury in justices' courts

SEC. 128. If the action is a criminal one, the jury must be impaneled as prescribed by law regulating the procedure in criminal cases; if a civil one, as provided in this Code.

In criminal case.
In civil cases.

SEC. 129. The manner of impaneling juries of inquest is prescribed in the provisions of the different statutes relating to such inquests.

Manner of impaneling juries of inquest.

TITLE IV.

MINISTERIAL OFFICERS OF COURTS OF JUSTICE.

CHAPTER I.

Bailiffs of the Supreme and District Courts.

SEC. 132. The supreme court and the district courts may appoint as many bailiffs as the exigencies of the business in said courts may require.

Courts may appoint.

SEC. 133. The bailiffs shall hold their offices at the pleasure of the courts appointing them, and shall perform such duties as may be required of them by the court or any justice thereof.

Term of office.

CHAPTER II.

Phonographic Reporters.

May be appointed.

Subject to order of court.

Who may be appointed.

Duties of.

SEC. 135. The judge of each district court in this Territory may appoint a competent phonographic reporter to be known as the official reporter of such court, and to hold office during the pleasure of the judge making the appointment. Such reporter shall, upon the order of the court in a civil action or proceeding, and on the order of the court, made and entered upon its own motion, or on motion of the prosecuting officer or the attorney for the defendant, in a criminal action or proceeding, take down in short-hand, all the testimony, the objections made, the rulings of the court, the exceptions taken, and oral instructions given, and if directed by the court, upon the request of either party, shall, within such reasonable time after the trial of such case, as the court may designate, write out the same in plain, legible long-hand and verify and file it with the clerk of the court in which the case was tried.

SEC. 136. No person shall be appointed official reporter, except upon satisfactory evidence of good moral character, and without being first examined as to his competency by at least three members of the bar practicing in said court, such members to be designated by the judge of said court. The committee of members of the bar so designated shall, upon the request of the judge of the said court, examine any person as to his qualifications whom said judge may wish to appoint as official reporter; and no person shall be appointed to such position upon whose qualifications such committee shall not have reported favorably; if he shall pass a satisfactory examination, the committee shall furnish him with a written certificate of that fact, signed by at least a majority of the members of the committee, which certificate shall be filed among the records of the court.

SEC. 137. The official reporter shall attend to the duties of his office in person, except when excused for good and sufficient reason by order of the court, which order shall be entered upon the minutes of the court. Employment in his professional capacity elsewhere shall not be deemed a good and sufficient reason for such excuse.

When the official reporter has been excused in the manner provided in this section, the court may appoint an official reporter pro tempore, who shall perform the same duties and receive the same compensation during the term of his employment as the official reporter. The official reporter and the official reporter pro tempore shall take and subscribe an oath of office before entering upon their employment.

Must take oath of office.

SEC. 138. The report of the official reporter, or official reporter pro tempore, duly appointed and sworn, when written out in long-hand writing, and certified as being a correct transcript of the testimony and proceedings of the case, shall be *prima facie* a correct statement of such testimony and proceedings.

Report of, certified, to be *prima facie* a correct statement. Proviso.

SEC. 139. The official reporter shall receive, as compensation for his services in civil actions and proceedings, for taking notes, a sum, to be fixed by the court, or a judge thereof, not exceeding ten dollars per day, and for transcription, a sum, to be in like manner fixed, not exceeding fifteen cents per hundred words; *Provided*, That when said reporter performs services in taking notes in more than one cause on the same day, the court or judge thereof shall apportion the per diem allowed between the several actions or proceedings in which such notes are taken. The shorthand notes so taken shall, immediately after the cause is submitted, be filed with the clerk; but for the purpose of writing out said notes, the reporter may withdraw the same for a reasonable time.

Fees of.

Proviso.

The reporter's fees for taking notes in civil cases shall be paid by the party in whose favor judgment is rendered, and shall be taxed up by the clerk of the court as costs against the party against whom judgment is rendered. In case of the failure of a jury to agree, the plaintiff must pay the reporter's fees for time employed and transcription ordered by plaintiff, which have accrued up to the time of the discharge of the jury. In cases where a transcript has been ordered by the court, the fees for transcription must be paid by the respective parties to the action or proceeding, in equal proportions, or by such of them, and in such proportions as the court, in its discretion, may order; and no verdict or judgment shall be entered up, except the court shall otherwise order, until the reporter's fees are paid, or a sum equivalent thereto deposited with the clerk of the court therefor. In no case shall a transcript be paid for unless ordered either by the plaintiff or defendant, or by the court, nor shall the reporter be required in any civil

Who must pay fees.

Proviso.

case to transcribe his notes until the fees therefor be tendered him or a sufficient amount to cover the same be deposited in court for that purpose. The party ordering the reporter to transcribe any portion of the testimony or proceedings must pay the fees of the reporter therefor. In criminal cases when the testimony has been taken down or transcribed upon the order of the court, the fees of the reporter shall be certified by the court to the auditor of public accounts, who shall draw his warrant upon the Territorial treasurer for the amount so certified and the same shall be paid out of the Territorial treasury; *Provided*, That if the defendant in a criminal action desires to have the reporter transcribe his notes taken on the trial, he must pay the reporter's fees therefor, or deposit a sum equivalent thereto, with the clerk of the court therefor, or the court must refuse to order the reporter to transcribe his notes.

TITLE V.

PERSONS SPECIALLY INVESTED WITH MINISTERIAL POWERS RELATING TO COURTS OF JUSTICE.

CHAPTER I.

Attorneys and Counselors-at-law.

Who may be admitted as attorneys.

SEC. 142. Any citizen of the United States, or person who has *bona fide* declared his or her intention to become one, in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as an attorney and counselor in all the courts of this Territory.

Qualifications of an attorney and counselor.

SEC. 143. Every applicant for admission as an attorney and counselor, must produce satisfactory testimonials of good moral character, and, except as hereinafter provided, undergo a strict examination in open court as to his qualifications, by a committee appointed by the justices of

the supreme court; *Provided*, That the several district courts of this Territory may admit applicants to practice as attorneys and counselors in their respective courts upon like testimonial and examination.

SEC. 144. If, upon such examination in the supreme court, the applicant is found qualified, the court shall admit him as an attorney and counselor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

SEC. 145. The examination may be dispensed with in the case of a person who has been admitted as an attorney and counselor in the highest court of any State or other Territory, and his affidavit of such admission, showing the county, State or Territory, the name of the court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission.

SEC. 146. Every person, on his admission, must take an oath to support the Constitution of the United States, and the laws of the United States and of this Territory, and to faithfully discharge the duties of an attorney and counselor-at-law to the best of his knowledge and ability.

SEC. 147. Each clerk must keep a roll of attorneys and counselors admitted to practice by the court of which he is clerk, which roll must be signed by the person admitted before he receives his license. Upon receiving his license he shall pay to the clerk a fee of five dollars.

SEC. 148. If any person shall practice law in any court except a justice's or probate court, without having a license as attorney and counselor, he is guilty of a contempt of court.

SEC. 149. It is the duty of an attorney and counselor:

1. To support the Constitution and the laws of the United States and of this Territory;
2. To maintain the respect due to the courts of justice and judicial officers;
3. To counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, excepting the defense of a person charged with a public offense;
4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and, at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or continuance of an action or proceeding from any corrupt motive of passion or interest;

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed;

Authority of attorney.

SEC. 150. An attorney and counselor has authority:

1. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise;

2. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Change of attorney.

SEC. 151. The attorney in an action or special proceeding may be changed at any time before judgment or final determination, as follows:

1. Upon his own consent, filed with the clerk or entered upon the minutes;

2. Upon the order of the court or judge thereof upon the application of the client, after notice to the attorney.

Notice of change

SEC. 152. When an attorney is changed, as provided in the last preceding section, written notice of the change and of the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party; until then he must recognize the former attorney.

Death or removal of attorney.

SEC. 153. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action or proceeding, for whom he was acting as attorney must before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

Removal and suspension.

SEC. 154. An attorney and counselor may be removed or suspended by the supreme court, and by the district courts for either of the following causes, arising after his admission to practice:

1. His conviction of felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence.

2. Willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in course of his profession, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

3. Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as an attorney and counselor by another person who is not an attorney and counselor.

In all cases where an attorney is removed or suspended by a district court, the judgment or order of removal or suspension may be revived on appeal, by the supreme court.

SEC. 155. In case of the conviction of an attorney or counselor of a felony or misdemeanor, involving moral turpitude, the clerk of the court in which such conviction is had, must within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

Conviction of felony.

SEC. 156. The proceedings to move or suspend an attorney and counselor under the first subdivision of Section 154, must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the second subdivision of the last named section may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

Proceedings for removal or suspension.

SEC. 157. If the proceedings are upon the information of another, the accusation must be in writing.

Accusation.

SEC. 158. The accusation must state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true.

Verification.

SEC. 159. After receiving the accusation, the court must, if in its opinion the case require it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or subsequent term, and must cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order.

Citation to answer.

SEC. 160. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

Appearance.

SEC. 161. The accused may answer to the accusation either by objecting to its sufficiency or denying it.

How to answer.

Demurrer.

SEC. 162. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation; the denial may be oral and without oath, and must be entered upon the minutes.

Answer.

SEC. 163. If an objection to the sufficiency of the accusation be not sustained, the accuser must answer within such time as may be designated by the court.

Trial.

SEC. 164. If the accused plead guilty, or refuse to answer the accusation, the court must proceed to judgment of removal or suspension. If he deny the matters charged, the court must, at such time as it may appoint, proceed to try the accusation.

Reference.

SEC. 165. The court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment.

SEC. 166. Upon conviction, in cases arising under the first subdivision of Section 154, the judgment of the court must be that the name of the party must be stricken from the roll of attorneys and counselors of the court, and that he be precluded from practicing as such attorney or counselor in all the courts of this Territory, and upon conviction in cases under the other subdivisions of that section, the judgment of the court may be according to the gravity of the offense charged—deprivation of the right to practice as an attorney or counselor in the courts of this Territory, permanently or for a limited period.

CHAPTER II.

Other Persons Invested with such Powers.

Appointment,
powers and du-
ties of receivers,
executors, etc.

SEC. 170. The appointment, powers and duties of receivers, executors, administrators, and guardians, are provided for and prescribed in the laws of the Territory relating to those subjects.

PART II.

OF CIVIL ACTIONS.

TITLE I.

OF THE FORM OF CIVIL ACTION.

SEC. 172. There is in this Territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs.

One form of civil action only. Parties to action, how designated.

SEC. 173. In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

SEC. 174. In a case where neither party can, as of right, require a trial by jury, of an issue of fact arising upon the pleadings, or where a question of fact, not in issue upon the pleadings, is to be tried, an order for the trial thereof by a jury may be made, stating distinctly and plainly, the question of fact to be tried. Such an order is the only authority necessary for the trial.

Special issues not made by pleadings, how tried.

TITLE II.

OF THE TIME OF COMMENCING ACTIONS.

CHAPTER I.

*The Time of Commencing Actions in General.*Commencement
of civil actions.

SEC. 175. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute.

CHAPTER II.

*The Time of Commencing Actions for the Recovery of Real Property.*When the peo-
ple will not sue.

SEC. 178. The people of this Territory will not sue any person for or in respect to any real property, or the issues and profits thereof, by reason of the right or title of the people to the same, unless:

1. Such right or title shall have accrued within seven years before any action or other proceedings for the same shall be commenced; or,

2. The people, or those from whom they claim, shall have received the rents and profits of such real property or some part thereof within the space of seven years.

Seizin
within seven
years, when nec-
essary in action
for real prop-
erty.

SEC. 179. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, grantor or predecessor was seized or possessed of the premises in question within seven years before the commencement of such action; and this section includes possessory rights to lands and mining claims.

SEC. 180. No cause or action, or defense to an action, founded upon the title to real property, or to rents or profits out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question, within seven years before the commencement of the act, in respect to which such action is prosecuted or defense made.

Such seizure when necessary in action or defense arising out of title to or rent of real property.

SEC. 181. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof, within the time required by law, and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title for seven years before the commencement of the action.

Possession, when presumed

Occupation deemed under legal title, unless adverse.

SEC. 182. Whenever it shall appear that the occupant or those under whom he claims, entered into the possession of the property, under claim of title exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for seven years, the property so included shall be deemed to have been held adversely, except that when the property so included consists of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

Occupation under written instrument or judgment, when deemed adverse.

SEC. 183. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

What constitutes adverse possession under written instrument or judgment.

1. Where it has been usually cultivated or improved.
2. Where it has been protected by a substantial inclosure.
3. Where although not enclosed it has been used for the supply of fuel, or of fencing timber, for the purposes of husbandry, or for the use of pasturage, or for the ordinary use of the occupant.
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have

been left not cleared, or not enclosed according to the usual course and custom of the adjoining country shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Premises actually occupied under claim of title deemed to be held adversely.

SEC. 184. Where it appears that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied and no other shall be deemed to have been held adversely.

What constitutes adverse possession under claim of title not written.

SEC. 185. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial enclosure;

2. Where it has been usually cultivated or improved;

3. Where labor or money has been expended upon dams, canals, embankments, aqueducts or otherwise, for the purpose of irrigating said lands, amounting to the sum of five dollars per acre; *Provided, however,* That in no case shall adverse possession be considered established under the provisions of any section or sections of this Code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and the party or persons, their predecessors and grantors have paid all the taxes, Territorial, county or municipal, which have been levied and assessed upon such land according to law.

Relation of landlord and tenant as affecting adverse possession.

SEC. 186. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of seven years from the termination of the tenancy, or where there has been no written lease until the expiration of seven years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord; but such presumption cannot be made after the periods herein limited.

Right of possession not affected by descent cast.

SEC. 187. The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property.

SEC. 188. If a person entitled to commence an action for the recovery of real property, or for the recovery

of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title shall first descend or accrue, either:

Certain disabilities excluded from time to commence action.

1. Within age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or,

4. A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense; the time during which such disability continues is not deemed any portion of the time in this Chapter limited for the commencement of such actions, or the making of such entry or defense, but such action may be commenced, or entry or defense made within the period of two years after such disability shall cease, or after the death of the person entitled, who shall die under such disability, but such action shall not be commenced, or entry or defense made after that period.

Same.

CHAPTER III.

The Time of Commencing Actions other than for the Recovery of Real Property.

SEC. 192. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Periods of limitations prescribed.

SEC. 193. Within five years:

Within five years.

1. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

2. An action for the mesne profits of real property.

SEC. 194. Within four years:

Within four years.

An action upon any contract, obligation or liability, founded upon an instrument of writing, except those mentioned in the preceding section.

SEC. 195. Within three years:

Within three years.

1. An action for a liability created by statute, other than a penalty or forfeiture;

2. An action for trespass upon real property;

3. An action for taking, detaining, or injuring any

goods or chattels, including actions for the specific recovery of personal property;

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party, of the facts constituting the fraud or mistake.

Within two
years.

SEC. 196. Within two years:

1. An action upon a contract, obligation or liability, not founded upon an instrument of writing; also on an open account for goods, wares and merchandise, and for any article charged in a store account;

2. An action against a marshal, sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution; *Provided*, That such action may be commenced within two years after the expiration of the term of his office. But this section shall not apply to an action for an escape.

3. An action to recover damages for the death of one caused by the wrongful act or neglect of another.

Within one year.

SEC. 197. Within one year:

1. An action upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the people, except when the statute imposing it prescribes a different limitation;

2. An action upon a statute, or upon an undertaking in a criminal action for a forfeiture or penalty to the people of the Territory;

3. An action for libel, slander, assault, battery, false imprisonment or seduction;

4. An action against a marshal, sheriff or other officer, for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;

5. An action against a municipal corporation for damages or injuries to property caused by a mob or riot.

Within six
months.

SEC. 198. Within six months; an action against an officer, or officers *de facto*:

1. To recover any goods, wares, merchandise or other property, seized by any such officer in his official capacity, as tax collector, or to recover the price or value of any goods, wares, merchandise, or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise, or other personal

property seized, or for damages done to any person or property in making any such seizure.

2. For money paid to any such officer under protest, or seized by such officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

SEC. 199. Actions on claims against a county, which have been rejected by the county court, must be commenced within one year after the first rejection thereof by such court. Same.

SEC. 200. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side. Where cause of action accrues on mutual account.

SEC. 201. An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued. Actions for relief not hereinbefore provided for.

SEC. 202. The limitations prescribed in this Chapter shall apply to actions brought in the name of the people of the Territory, or for the benefit of the people of the Territory, in the same manner as to actions brought by private persons. Actions by the people subject to the limitations of this Chapter.

SEC. 203. An action to redeem a mortgage of real property with or without an account of rents and profits, may be brought by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for seven years after breach of some condition of the mortgage. Action to redeem a mortgage without account of rents and profits.

SEC. 204. If there is more than one such mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action, under the provisions of this Chapter, any one of them, who is entitled to maintain such an action, may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits, proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises. Same, when there are two or more such mortgages.

SEC. 205. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings or loan society, there is no limitation. No limitation.

CHAPTER IV.

General Provisions as to the Time of Commencing Actions.

When action is commenced.

SEC. 208. An action is commenced, within the meaning of this title, when the complaint is filed.

Exception where defendant is out of the Territory.

SEC. 209. If when the cause of action accrues against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory; and if after the cause of the action accrues he depart from the Territory, the time of his absence is not part of the time limited for the commencement of the action.

Exception, as to persons under disability.

SEC. 210. If a person entitled to bring an action other than for the recovery of real property, be at the time the cause of action accrued, either:

1. Within the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court, for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action. The time of such disability is not a part of the time limited for the commencement of the action.

Provision where person entitled dies before limitation expires.

SEC. 211. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within six months from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives after the expiration of that time, and within one year after issuing of letters testamentary or of administration.

In suits by aliens time of war to be deducted.

SEC. 212. When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

SEC. 213. If an action is commenced within the

time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or personal representatives, may commence a new action within one year after the reversal.

Provision where judgment has been reversed.

SEC. 214. When the commencement of an action is stayed by injunction, or a statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Provision where action is stayed by injunction.

SEC. 215. No person can avail himself of a disability, unless it existed when his right of action accrued.

Disability must exist when right of action accrued.

SEC. 216. When two or more disabilities co-exist at the time the right of action accrues, the limitation does not attach until they are removed.

When two or more disabilities exist, etc.

SEC. 217. This Title does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

This chapter not applicable to actions against directors, etc. Limitations in such cases prescribed.

SEC. 218. No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operations of this Title, unless the same is contained in some writing signed by the party to be charged thereby.

Acknowledgment or new promise must be in writing.

SEC. 219. When a cause of action has arisen in another State or Territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of one who has been a citizen of this Territory, and who has held the cause of action from the time it accrued.

Limitation laws of other States and Territories, effect of.

SEC. 220. This Title does not extend to actions already commenced, nor to cases where the time prescribed in any existing statute for acquiring a right or barring a remedy has fully run, but the laws now in force are applicable to such actions and cases, and are repealed subject to the provisions of this section.

Existing causes of action not affected.

SEC. 221. The word action, as used in this Title, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

Word "action" construed, how.

TITLE III.

OF THE PARTIES TO CIVIL ACTIONS.

Action to be in name of party in interest.

SEC. 224. Every action must be prosecuted in the name of the real party in interest, except as provided in Section 226.

Assignment of thing in action not to prejudice defense.

SEC. 225. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set off or other defense, existing at the time of, or before notice of the assignment; but this section does not apply to a negotiable instrument transferred in good faith and upon good consideration, before maturity.

Executor, trustee, may sue without joining the persons beneficially interested.

SEC. 226. An executor, or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, must be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

Married woman as party.

SEC. 227. When a married woman is a party, her husband must be joined with her, except:

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue or be sued alone;

2. When the action is between herself and her husband, she may sue or be sued alone;

3. When she is living separate and apart from her husband, by reason of his desertion of her, or by agreement in writing entered into between them, she may sue or be sued alone.

Wife may defend, when.

SEC. 228. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

Infant, etc., to appear by guardian.

SEC. 229. When an infant, or an insane, or incompetent person is a party, he must appear either by his general guardian, or by a guardian *ad litem* appointed by the court, or judge thereof, in which the action is pending in each case. A guardian *ad litem* may be appointed in any case, when it is deemed, by the court in which the

action or proceeding is prosecuted, or by the judge thereof, expedient to represent the infant, insane, or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

SEC. 230. When a guardian *ad litem* is appointed by a court, or the judge thereof, he must be appointed as follows:

Guardian, how appointed.

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons, or if under that age, or if he neglect so to apply, then upon the application of a relative or friend of the infant, or of any other party to the action.

3. When an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

SEC. 231. An unmarried female under twenty years of age at the time of her seduction may prosecute, as plaintiff, an action therefor, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Unmarried female may sue for her own seduction, when.

SEC. 232. A father, or in case of his death or desertion of his family, the mother may prosecute as plaintiff for the seduction of the daughter, who at the time of her seduction is under the age of majority; and the guardian for the seduction of the ward, who is at the time of her seduction under the age of majority, though the daughter or the ward be not living with or in the service of the plaintiff at the time of the seduction, or afterwards, and there be no loss of service.

Father, etc., may sue for seduction of daughter, etc.

SEC. 233. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child; and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.

Who may sue for injury and death of child.

SEC. 234. When the death of a person not being a minor is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an ac-

When representative may sue.

Damages. tion for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Who may be joined as plaintiff. SEC. 235. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this Code.

Who may be joined as defendants. SEC. 236. Any person may be made a defendant, who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Defendants in action to determine adverse claims. SEC. 237. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises as against the defendants in the action, against whom judgment has passed.

Claimants under a common source of title may unite. SEC. 238. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties in interest, when to be joined. SEC. 239. Of the parties to the action, those who are united in interest must be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When one or more may sue or defend for the whole.

SEC. 240. Persons severally liable upon the same

obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

Plaintiff may sue in one action the different parties to commercial paper.

SEC. 241. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Tenants in common, etc., may sever, in bringing or defending actions.

SEC. 242. An action or proceeding does not abate by the death or any disability of a party, or by the transfer of any interest therein, if the cause of action or proceeding survive or continue. In case of the death, or any disability, of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In the case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Action, when not to abate.

Substitution.

SEC. 243. A defendant against whom an action to recover upon a contract, or an action of ejectment, or an action for specific personal property is pending, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon such contract, or for such property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct, and the court may in its discretion make the order.

Another person may be substituted for the defendant.

SEC. 244. Whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made, and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

Actions against conflicting claimants.

Substitution

Intervention,
when and how.

SEC. 245. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third party is permitted to become a party to an action or proceeding between other persons either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceeding, who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Associates may
be sued by
name of associ-
ation.

SEC. 246. When two or more persons associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants, and had been sued upon their joint liability.

Court when to
decide contro-
versy or to order
other parties to
be brought in.

SEC. 247. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in, and thereupon the party directed by the court must serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have ten days, or such time as the court may order, after service in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the court may cause his default to be entered, and proceed as in other cases of default, or may make such other order as the condition of the action and justice shall require. And when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

TITLE IV.

OF THE PLACE OF TRIAL OF CIVIL ACTION.

SEC. 250. Actions for the following causes must be tried in the judicial district in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this Code.

Certain actions to be tried where the subject or some part thereof is situated.

1. For the recovery of real property, or of an estate or interest therein, or for the determination, in any form, of such right or interest, and for injuries to real property;
2. For the partition of real property;
3. For the foreclosure of a mortgage of real property.

Where the real property is situated partly in one judicial district and partly in another, the plaintiff may select either of the judicial districts, and the district so selected is the proper district for the trial of such action.

SEC. 251. Actions for the following causes shall be tried in the judicial district where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

Other actions where the cause or some part thereof arose.

1. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water situated in two or more districts, the action may be brought in any district bordering on such lake, river or stream, and opposite to the place where the offense was committed.

2. Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

SEC. 252. An action against a county, or between counties, may be commenced and tried in the judicial district where such county or counties are situated; unless such action is between counties situated in different judicial districts, in which case it may be commenced and tried in either district in which one of the counties is situated.

Place of trial of action against counties.

Other actions according to the residence of the parties.

SEC. 253. In all other cases the action must be tried in the judicial district in which the defendants, or some of them, reside at the commencement of the action; or, if none of the defendants reside in the Territory, or, if residing in this Territory, the judicial district in which they reside is unknown to the plaintiff, the same may be tried in any judicial district the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any judicial district where either of the parties reside or service is had; subject, however, to the power of the court to change the place of trial as provided in this Code.

Action may be tried in any judicial district, unless, when.

SEC. 254. If the judicial district in which the action is commenced is not the proper judicial district for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper judicial district.

Place of trial may be changed in certain cases.

SEC. 255. The court may, on motion, change the place of trial in the following cases:

1. When the judicial district designated in the complaint is not the proper district;

2. When there is reason to believe that an impartial trial cannot be had therein;

3. When the convenience of witnesses and the ends of justice would be promoted by the change;

4. When from any cause the judge is disqualified from acting.

When judge is disqualified. Cause to be transferred.

SEC. 256. If an action or proceeding is commenced or pending in a court, and the judge or justice thereof is disqualified from acting as such, or if for any cause the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court and entered in the minutes; or if they do not so agree, then to the nearest court, where the like objection or cause for making the order does not exist, as follows:

1. If in the district court, to another district court;

2. If in the probate court, to the probate court of an adjoining county;

3. If in a justice's court, to another justice's court in the same county.

Papers to be transmitted, costs, etc.

SEC. 257. When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleadings and papers

therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein. Jurisdiction of.

SEC. 258. When an action or proceeding affecting the title to, or possession of real estate has been brought in or transferred to any district court, other than the district in which the real estate, or some portion of it is situated, the clerk of such court must, after final judgment therein, certify, under his seal of office, and transmit to the district court of the district in which the real estate affected by the action is situated, a copy of the judgment. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from——court (naming the proper court). Proceedings after judgment in certain cases transferred.

TITLE V.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SEC. 262. Civil actions in the courts of this Territory are commenced by filing a complaint. Action, how commenced.

SEC. 263. The clerk must indorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued; and if the action be brought against two or more defendants, who reside in different judicial districts or in different counties within the same or different judicial districts within the Territory, the plaintiff may have a summons issued for each of such counties at the same time. But at any time within one year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two Indorsement of complaint. Summons.

Waiver of summons.

or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year, at any time before trial.

Summons, how issued, directed, and what to contain.

SEC. 264. The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

1. The names of the parties to the action, the court in which it is brought, and the judicial district in which the complaint is filed;

2. A statement of the nature of the action in general terms;

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the district court, in which the action is brought, is held; within twenty days, if served out of said county, but in the district in which the action is brought, and within forty days if served elsewhere;

4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint (stating it);

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint. The name of the plaintiff's attorney must be indorsed on the summons.

Alias summons.

SEC. 265. If the summons is returned without being served on any or all of the defendants, the clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original.

Constructive notice of pendency of action, how given.

SEC. 266. In an action affecting the title or the right of possession of real property, the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file for record with the recorder of the county in which the property or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Summons, how served and returned.

SEC. 267. The summons must be served by the United States marshal, or by the sheriff of the county where the defendant is found and served unless the court

or judge thereof shall otherwise order in any particular case. A certified copy of the complaint must be served with the summons, unless two or more defendants are residents of the same judicial district, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the marshal or sheriff, it must be returned, with his certificate of its service, and of the service of any copy of the complaint, where such copy is served, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SEC. 268. The summons must be served by delivering a copy thereof as follows:

Summons, upon
whom served.

1. If the suit be against any incorporated city, service must be made on the mayor or recorder;

2. If the suit be against any county, service must be made on the probate judge or clerk of the county court;

3. If the suit be against a school district, service must be made on the trustees or any two of them;

4. If the suit be against any irrigation company, service must be made on the superintendent or water master;

5. If the suit be against any other corporate body, incorporated under the laws of the Territory, service must be made on the president or chief officer, or its secretary, or clerk, if such officer, secretary or clerk can be found within the district, and if not so found, then on any agent of said company or person having in his charge or custody any property of such company. When the defendant is a foreign corporation and has an acknowledged agent in this Territory, service may be made on such agent, or if no such agent is found, on any person in its employ, or who has any of its property in charge;

6. If against a minor under the age of fourteen years, on such minor personally, and also on his father, mother or guardian, or if such minor has no such father, mother or guardian in the Territory, then on any person having the care and control of such minor, or with whom he resides, or in whose service he is employed;

7. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, on such guardian;

8. In all other cases, on the defendant personally, or by leaving a certified copy thereof at his usual place of

abode, with some suitable person, of at least the age of fourteen years.

Objection to
summons, how
taken.

SEC. 269. Objections to the summons, or the service thereof, or proof of service thereof, in the particulars named in the preceding section, may be taken by motion on behalf of defendant, particularly specifying the objections, accompanied by the certificate of counsel that in his opinion the objection is well taken; after the filing and serving of such motion and certificate and serving of such motion and certificate, the time for pleading shall be suspended until such objection is passed upon by the court.

Publication,
when defendant
is absent from
the Territory,
concealed, or a
foreign corpora-
tion having no
agent, etc.

SEC. 270. Where the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot after due diligence be found within the Territory, or conceals himself to avoid the service of summons, or being a corporation, or joint stock association, cannot be served as provided in the preceding section, and the fact shall appear by affidavit to the satisfaction of the court or a judge thereof, and it also appears by such affidavit or by the verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

Service by pub-
lication made.

SEC. 271. The order must direct the publication to be made in a newspaper, to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the Territory, or absent therefrom, must not be less than one month. In case of publication, when the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons and complaint to be forthwith deposited (post-paid) in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory is equivalent to publication and deposit in the post office; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Proceedings
where there are
several defend-
ants and part
only are served.

SEC. 272. When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them,

the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 273. Proof of the service of summons and complaint must be as follows: Proof of service, how made.

1. If served by the United States marshal or sheriff, his certificate thereof;

2. If by any other person, his affidavit thereof; or,

3. In case of publication, the affidavit of the printer or his foreman, or principal clerk, showing the same; and an affidavit of the deposit of a copy of the summons in the post office, if the same has been deposited; or,

4. The written admission of the defendant. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

SEC. 274. From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him. Jurisdiction when acquired. Appearance.

TITLE VI.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

The Pleadings in General.

SEC. 278. The pleadings are the formal allegations by the parties of their respective claims and defenses for the judgment of the court. Definition of pleadings.

This code pre-
scribes the
forms and rules
of pleadings.

What pleadings
are allowed.

SEC. 279. The forms of pleading in civil actions and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this Code.

SEC. 280. The only pleadings allowed on the part of the plaintiff are:

1. The complaint;
 2. The demurrer to the answer.
- And on the part of the defendant:
1. The demurrer to the complaint;
 2. The answer.

CHAPTER II.

The Complaint.

Complaint, first
pleading.

What complaint
to contain.

SEC. 285. The first pleading on the part of the plaintiff is the complaint.

SEC. 286. The complaint must contain:

1. The title of the action, the name of the court and the judicial district in which the action is brought and the names of the parties to the action;
2. A statement of the facts constituting the cause of action, in ordinary and concise language;
3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

What causes of
action may be
joined.

SEC. 287. The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

1. Contracts express or implied;
2. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same;
3. Claims to recover specific personal property, with or without damage for the withholding thereof;
4. Claims against a trustee, by virtue of a contract, or by operation of law;
5. Injuries to character;
6. Injuries to person;
7. Injuries to property.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must

be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

CHAPTER III.

Demurrer to Complaint.

SEC. 292. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either: When defendant may demur.

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has not legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action; or,

7. That the complaint is ambiguous, unintelligible or uncertain.

SEC. 293. The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded. It may be taken to the whole complaint or to any of the causes of action stated therein, or the defendant may demur and answer at the same time. Demurrer must specify, etc.
May be taken to part.
May answer and demur at same time.

SEC. 294. If the complaint is amended, a copy of the amendments must be filed, or the court may, in its discretion, require the complaint, as amended, to be filed, and a copy of the amendments, or amended complaint, must be served upon the defendants affected thereby, or upon his attorney if he has appeared by attorney. The defendant must answer the amendment or the complaint as amended, within ten days after service thereof, or such other time as the court may direct, and judgment by default may be entered, upon failure to answer, as in other cases. What proceedings are to be had when complaint is amended.

Objection not appearing on complaint may be taken by answer.

Objection, when deemed waived.

SEC. 295. When any of the matters enumerated in Section 292 do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 296. If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

CHAPTER IV.

The Answer.

Answer, what to contain.

SEC. 300. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant;
2. A statement of any new matter constituting a defense or counter claim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

When counter claim to be set up.

SEC. 301. The counter claim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;
2. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

When defendant omits to set up counter claim.

SEC. 302. If the defendant omit to set up a counter claim in the cases mentioned in the first subdivision of the last section, neither he nor his assignee can afterward maintain an action against the plaintiff therefor.

SEC. 303. When cross demands have existed between persons under such circumstances that if one had brought an action against the other, a counter claim could have been set up, the two demands shall be deemed compensated so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

Cross demands deemed compensated.

SEC. 304. The defendant may set forth by answer as many defenses and counter claims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue or may demur and answer at the same time.

Answer may contain several grounds of defense.

SEC. 305. Whenever the defendant seeks affirmative relief against any party relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court, subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to an original complaint.

Cross complaint

CHAPTER V.

Demurrer to Answer.

SEC. 310. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Demurrer to answer.

SEC. 311. The demurrer may be taken upon one or more of the following grounds:

Grounds of demurrer.

1. That several causes of counter claim have been improperly joined;

2. That the answer does not state facts sufficient to constitute a defense or counter claim;

3. That the answer is ambiguous, unintelligible, or uncertain.

CHAPTER VI.

Verification of Pleadings.

Verification of pleadings.

SEC. 315. Every pleading must be subscribed by the party, or his attorney, and when the complaint is verified, or when the Territory, or any officer of the Territory in his official capacity is plaintiff, the answer must be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or unless an officer of the Territory, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party, unless the parties are absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

Copy of written instrument contained in complaint admitted, unless answer is verified.

SEC. 316. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified.

Genuineness of instrument, how controverted.

SEC. 317. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant or his attorney.

Exceptions to rules prescribed by two preceding sections.

SEC. 318. But the execution of the instruments mentioned in the two preceding sections is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an

inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case.

CHAPTER VII.

General Rules of Pleading.

SEC. 322. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Pleadings to be liberally construed.

SEC. 323. Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the court may in its discretion impose.

Sham and irrelevant answers, etc., may be stricken out.

SEC. 324. It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within ten days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account when the one delivered is too general or is defective in any particular.

How to state an account in pleadings.

SEC. 325. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

Description of real property in a pleading.

SEC. 326. In pleading a judgment or other determination of a court, or board, or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Judgments, how pleaded

SEC. 327. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally, that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Conditions precedent, how to be pleaded.

SEC. 328. In pleading the statute of limitations, it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred

Statute of limitations, how pleaded.

by the provisions of section (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

Private statutes,
how pleaded.

SEC. 329. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Libel and slander,
how stated
in complaint.

SEC. 330. In an action for libel or slander, it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state, generally, that the same was published, or spoken, concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish, on the trial, that it was so published or spoken.

Not necessary to
allege or prove
special damages.

Answer in such
cases.

SEC. 331. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Allegations not
denied, when
deemed to be
true. When to
be deemed controverted.

SEC. 332. Every material allegation of the complaint not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party.

A material allegation defined.

SEC. 333. A material allegation in a pleading is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental
complaint and
answer.

SEC. 334. The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case, occurring after the former complaint or answer, but the making of a supplemental complaint or answer is not a waiver of the cause of action set up in the former complaint, or of the defense set up in the former answer.

Pleadings to be
filed and served.

SEC. 335. All pleadings subsequent to the complaint must be filed with the clerk and copies thereof served upon the adverse party, or his attorney.

CHAPTER VIII.

Variance, Mistakes in Pleadings, and Amendments.

SEC. 340. No variance between the allegations in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

Variance, when material.

SEC. 341. Where the variance is not material as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

Immaterial variance, how provided for.

SEC. 342. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

What not to be deemed a variance.

SEC. 343. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer, and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to a complaint is overruled and there is no answer filed, the court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied to the extent mentioned in Section 332.

Amendments of course on effect of demurrer.

SEC. 344. The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or

Amendments on terms.

Discretion and
power of court.

demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made and filed after the time limited by this Code; and may, also, upon such terms as may be just relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any reason satisfactory to the court, or the judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the court, or the judge thereof, in vacation, may grant the relief upon the application made within a reasonable time, not exceeding six months after the adjournment of the term. When, from any cause, the summons in an action has not been personally served on the defendant, the court may allow on such terms as may be just, such defendant or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action. When in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond or undertaking, is sued for taking the same, the officer or sureties may in their answers set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

Affidavit may be
disregarded.

Suing a party
by a fictitious
name.

SEC. 345. When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

No error or defect to be regarded unless it affects substantial rights.

SEC. 346. The court must in every stage of an action disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

SEC. 347. When a demurrer to any pleading is sustained or overruled, and time to amend or answer is given, the time so given runs from the service of notice of the decision or order.

Time to amend
or answer de-
murrer.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

SEC. 351. No person shall be arrested in a civil action except as prescribed in this Code.

No person to be
arrested except
as prescribed in
this Code

SEC. 352. The defendant may be arrested, as herein-after prescribed, in the following cases:

Defendant,
when subject
to arrest.

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, where the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another;

2. In an action for a fine or penalty or for a breach of promise to marry, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

3. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the marshal, sheriff, or other executive officer of the court;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with the intent to defraud his creditors.

Order for arrest,
by whom made.

SEC. 353. An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought.

Affidavit for order
of arrest
requisite.

SEC. 354. The order may be made whenever it appears to the judge by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in Section 352. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

Undertaking re-
quired of plain-
tiff.

SEC. 355. Before making the order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

Order, when
made, and its
form.

SEC. 356. The order may be made at the time of the issuing of the summons, or any time afterwards, before judgment. It must require the officer to whom it is directed, forthwith to arrest the defendant and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

Affidavit and order
to be delivered
to the sheriff and
copy to defend-
ant.

SEC. 357. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the officer, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Arrest, how
made.

SEC. 358. The officer must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant to be
discharged on
bail or deposit.

SEC. 359. The defendant, at any time before execution, must be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest.

Bail, how given.

SEC. 360. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the

amount mentioned in the order of arrest; that the defendant will at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 361. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the officer of the court, where he was arrested.

Surrender of defendant.

SEC. 362. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him; or by written authority, endorsed on a certified copy of the undertaking, may empower an officer to do so. Upon the arrest of the defendant by said officer, or upon his delivery to him by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Same.

SEC. 363. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

Bail, how proceeded against.

SEC. 364. The bail are exonerated by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Bail, how exonerated.

SEC. 365. Within the time limited for that purpose, the officer making the arrest must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the officer a notice that he does not accept the bail, or he is deemed to have accepted them, and the officer is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the clerk of the court.

Delivery of undertaking to plaintiff, and its acceptance or rejection by him.

SEC. 366. Within five days after the receipt of notice, the officer or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or

Notice of justification.

New undertaking, if other bail.

other bail (specifying the places of residence and occupations of the latter) before the judge of the court, or clerk, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there must be a new undertaking.

Qualifications of bail.

SEC. 367. The qualifications of bail are as follows:

1. Each of them shall be a resident, and householder, or free holder, within the Territory;

2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property, exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

SEC. 368. For the purpose of justification, each of the bail must attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

SEC. 369. If the judge, or clerk, find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the officer is thereupon exonerated from liability.

Deposit of money with officer.

SEC. 370. The defendant may, at the time of his arrest, instead of giving bail, deposit with the officer the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this Chapter, the defendant may deposit such amount instead of giving bail. In either case, the officer must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

Payment of money into court by officer.

SEC. 371. The officer making the arrest, must, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he must deliver or transmit to the plaintiff, or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the officer to collect the sum deposited as in other cases of delinquency.

SEC. 372. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the defendant.

Substituting
bail for deposit.

SEC. 373. Where money has been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment must refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk must, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

Money depos-
ited, how ap-
plied or disposed
of.

SEC. 374. If after being arrested, the defendant escape, or is rescued, the officer is liable as bail; but he may discharge himself from such liability by giving bail at any time before judgment.

Officer, when
liable as bail,
and his dis-
charge from
liability.

SEC. 375. If a judgment be recovered against the officer, upon his liability as bail, and an execution thereon is returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Proceedings on
judgment against
officer.

SEC. 376. A defendant arrested, may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

Motion to vacate
order of arrest
or reduce bail.

SEC. 377. If upon application it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

Contest of
motion.

When the order
vacated or bail
reduced.

CHAPTER II.

Claim and Delivery of Personal Property.

SEC. 382. The plaintiff in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Delivery of per-
sonal property,
when it may be
claimed.

Affidavit and its
requisites.

SEC. 383. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one on his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof according to his best knowledge, information and belief;

4. That it has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and,

5. The actual value of the property.

Requisition to
U. S. Marshal
to take and de-
liver the prop-
erty.

SEC. 384. The plaintiff, or his attorney, may, thereupon, by an indorsement in writing upon the affidavit, require the United States marshal, or the sheriff of the county, where the property claimed may be, to take the same from the defendant.

Security on the
part of the
plaintiff and
proceedings in
serving the
order.

SEC. 385. Upon the receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties, approved by the United States marshal, or sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the officer must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or if neither have any known place of abode, by putting them in the nearest post office (post paid), directed to the defendant.

Exceptions to
sureties and
proceedings
thereon, or on
failure to except.

SEC. 386. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. When the defendant excepts, the

sureties must justify on notice in like manner as upon bail on arrest; and the officer is responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 387. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in Section 392.

Defendant, when entitled to re-delivery.

SEC. 388. The defendant's sureties, upon notice to the plaintiff of not less than two, or more than five days, must justify before the judge, or the clerk, in the same manner as upon bail on arrest; and upon such justification, the officer must deliver the property to the defendant. The officer is responsible for defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Justification of defendant's sureties.

SEC. 389. The qualification of sureties, and their justification must be such as are prescribed by this Code, in respect to bail upon an order of arrest.

Qualification of sureties.

SEC. 390. If the property, or any part thereof, be concealed in a building or enclosure, the officer must publicly demand its delivery. If it be not delivered, he must cause the building or enclosure to be broken open, and take the property into his possession, and if necessary, he may call to his aid the power of the county.

Property, how taken when concealed in building or enclosure.

SEC. 391. When the officer has taken the property, as in this Chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking, and necessary expenses for keeping the same.

Property, how kept.

SEC. 392. If the property taken be claimed by another person than the defendant, or his agent, and such person make affidavit of his title thereto, or right to the

Claim of property by third person.

possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer is not bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by an undertaking, by two sufficient sureties.

Notice and affidavit, and where to be filed.

SEC. 393. The officer must file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

Injunction.

Injunction, what is, and who may grant it.

SEC. 397. An injunction is a writ or order, requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge, may be enforced as the order of the court.

When it may be granted.

SEC. 398. An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce waste, great or irreparable injury to the plaintiff;

3. When it appears during the litigation, that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual;

4. An injunction may also be granted on the motion of the defendant, upon filing an answer in the nature of a cross bill, praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff.

SEC. 399. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits or other evidence. The complaint in the one case, and the affidavits or other evidence in the other, must show satisfactorily that sufficient grounds exist therefor. No injunction can be granted on the complaint, unless it is verified. When granted on the complaint, a copy of the complaint and verification attached must be served with the injunction; when granted upon affidavit, without notice, a copy of the affidavit must be served with the injunction.

At what time it may be granted, and what is required to obtain it.

SEC. 400. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause, but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Injunction after answer.

SEC. 401. On granting an injunction, the court or judge must require, except when the Territory, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties upon notice to the defendant of not less than two nor more than five days, must justify before a judge or clerk of the court in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Undertaking on injunction.

Justification of sureties.

SEC. 402. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may in the meantime be restrained.

Order to show cause why injunction should not be granted.

SEC. 403. An injunction to suspend the general and ordinary business of a corporation cannot be granted without due notice of the application therefor to the proper officers or agent of the corporation, except when the people of this Territory are a party to the proceedings.

Injunction to suspend business of a corporation, how and by whom granted.

Motion to vacate
or modify
injunction.

SEC. 404. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is pending, or a judge thereof, to dissolve or modify the same. The application may be made upon the complaint and the affidavit or affidavits on which the injunction was granted, if any were used, or upon affidavits or other testimony on the part of the defendant, with or without the answer. If the application be made upon affidavits, or other evidence on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the injunction was granted, and the defendant may then, in proper cases, introduce rebutting affidavits or other evidence; *Provided*, That for the purpose of allowing the plaintiff to introduce further evidence, the answer or verification thereto attached shall be deemed an affidavit.

When to be
vacated or
modified.

SEC. 405. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it must be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it must be modified.

CHAPTER IV.

Attachment.

Attachment,
when may issue
and in what
cases.

SEC. 410. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this Chapter provided, in the following cases:

1. In an action upon a judgment or upon a contract, express or implied, which is not secured by any mortgage or lien upon real or personal property situate or being in this Territory, or, if originally so secured such security has, without any act of the plaintiff, or of the person to whom the security was given, become valueless.

2. In an action upon a judgment or upon a contract, express or implied, against a defendant not residing in this Territory.

3. In an action upon a judgment or upon a contract express or implied against any person who:

a. Stands in defiance of an officer, or conceals himself so that process cannot be served upon him; or,

b. Has assigned, disposed of or concealed, or is about to assign, dispose of or conceal any of his property with intent to defraud his creditors; or,

c. Has departed, or is about to depart from the Territory, to the injury of his creditors; or,

d. Fraudulently contracted the debt or incurred the obligation respecting which the action is brought.

SEC. 411. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, which shall be filed, setting forth:

Affidavit for attachment, what to contain.

1. That the defendant is indebted to the plaintiff, specifying the amount of such indebtedness as near as may be over and above all legal set offs or counter claims, and whether upon a judgment or an express or implied contract, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, situate or being in this Territory; or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and that the same is an actual *bona fide* existing demand due and owing from the defendant to the plaintiff.

2. And in all cases that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant, and also specifying one or more of the causes set forth in the preceding section.

SEC. 412. Before issuing the writ the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Undertaking on attachment.

SEC. 413. The writ must be directed to the United States marshal, or to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his jurisdiction not exempt from execution, or so much thereof as may be sufficient to satisfy the

Writ, to whom directed and what to state.

plaintiff's demand, and the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached in which case to take such undertaking. Several writs may be issued at the same time to the marshal, or the sheriffs of different counties; and the plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Shares of stock and debts due defendant, how attached and disposed of.

SEC. 414. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached and, if judgment be recovered, be sold to satisfy the judgment and execution.

How real and personal property shall be attached.

SEC. 415. The officer to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in Section 413 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property attached and a notice that it is attached, and by leaving a similar copy of the writ, description and notice with an occupant of the property, if there is one, if not then by posting the same in a conspicuous place on the property attached;

2. Real property or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the recorder of the county a copy of the writ, together with a description of the property and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him) are attached; and by leaving with the occupant, if any, and with such other person or his agent, if known and within the county, or at the residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The recorder must index such attachment when filed in the names of

both of the defendant and of the person by whom the property is held, or in whose name it stands on the records;

3. Personal property capable of manual delivery must be attached by taking it into custody;

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ;

5. Debts and credits, and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control belonging to defendant, are attached in pursuance of said writ.

SEC. 416. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the officer making the service must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Attorney to give written instructions to officer what to attach.

Copy of writ to be served upon such person

SEC. 417. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice as provided in the two last sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the officer, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Garnishment; when garnishee liable to plaintiff.

SEC. 418. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court, or judge, or a referee appointed by the court, or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court, or judge, may, after such examination, order personal property,

Citation to garnishee to appear before a court or judge.

capable of manual delivery, to be delivered to the officer, on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory, how made.

SEC. 419. The officer making the service must make a full inventory of the property attached and return the same with the writ. To enable him to make such returns as to the debts and credits attached, he must request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Party refusing to give memorandum may be compelled to pay costs.

Perishable property, how sold.

SEC. 420. If any of the property attached be perishable, the officer must sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him must be retained by him, to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The receipt of the officer is a sufficient discharge for the amount paid.

Property attached may be sold as under execution, if the interests of the party require.

SEC. 421. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court, to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

When property claimed by a third party, how tried.

SEC. 422. If any personal property attached be claimed by a third person as his property, the officer may summon a jury of six men to try the validity of such claim, and such proceedings shall be had thereon, with like effect, as in case of a claim after levy upon execution.

If plaintiff obtains judgment, how satisfied.

SEC. 423. If judgment be recovered by the plaintiff, the officer must satisfy the same out of the property attached by him which has not been delivered to the defend-

ant, or a claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales must be given, and the sales conducted as in other cases of sales on execution.

SEC. 424. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the officer must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the officer, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached, unapplied on the judgment.

When there remains a balance due, how collected.

SEC. 425. If the execution be returned unsatisfied, in whole, or in part, the plaintiff may prosecute any undertaking given pursuant to Section four hundred and thirteen (413), or Section four hundred and twenty-eight (428), or he may proceed as in other cases upon the return of an execution.

When suits may be commenced on the undertaking.

SEC. 426. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the officer, and all the property attached remaining in his hands, must be delivered to the defendant, or his agent; the order of attachment shall be discharged, and the property released therefrom.

If defendant recover judgment, what the officer is to deliver.

SEC. 427. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment, wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment, any

Proceedings to release attachment, before whom taken.

or all of the property attached and all of the property so released, and all of the proceeds of the sales thereof must be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

Release from attachment, on what terms.

SEC. 428. Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties, residents and freeholders, or householders, in the Territory, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver the attached property so released, to the proper officer, to be applied to the payment of the judgment, or in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge, making such order, may fix the sum for which the undertaking must be executed, and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached cannot be released from the attachment without their justification, if the same be required.

Motions for discharge of writ, when and before whom made.

SEC. 429. The defendant may, also, at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the plaintiff, apply on motion to the court in which the action is brought, or to the judge thereof, for the discharge of the writ of attachment, on the ground that the same was improperly or irregularly issued.

When motion made on affidavit, it may be opposed by affidavit.

SEC. 430. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to those on which the attachment was made.

When writ must be discharged.

SEC. 431. If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

When writ to be returned.

SEC. 432. The officer making the service must return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made, discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the county recorder in which the notice of attachment has been filed, and be indexed in like manner.

CHAPTER V.

Receivers.

SEC. 436. A receiver may be appointed by the court in which an action is pending, or has passed to judgment, or by the judge thereof:

Appointment of receiver.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SEC. 437. Upon the dissolution of any corporation, the district court of the district embracing the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and

Appointment of receivers upon dissolution of corporations.

effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Receiver, appointment; undertaking on *ex-parte* application.

SEC. 438. No party or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the clerk. If a receiver be appointed upon an *ex-parte* application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver, and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking.

SEC. 439. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or judge, execute an undertaking to such person, and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Powers of receivers.

SEC. 440. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Investment of funds.

SEC. 441. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action.

CHAPTER VI.

Deposit in Court.

SEC. 445. When it is admitted by the pleading, or shown upon the examination of a party, that he has in his possession or under his control, any money or other thing capable of delivery, which being the subject of litigation is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Deposit in court.

SEC. 446. If the money is deposited in court, it must be paid to the clerk, who must deposit it, under the direction of the court or judge.

Money paid to clerk must be deposited under direction of judge.

SEC. 447. Whenever in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, beside punishing the disobedience, may make an order requiring the United States marshal or sheriff to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

Manner of enforcing the order

TITLE VIII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

Judgment in General.

SEC. 451. A judgment is the final determination of the rights of the parties in an action or proceeding.

Judgment defined.

Judgment may be for or against one of the parties.

SEC. 452. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Judgment may be against one party and proceed as to others.

SEC. 453. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

SEC. 454. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

Action may be dismissed or nonsuit entered.

SEC. 455. An action may be dismissed, or a judgment of nonsuit entered in the following cases:

1. By the plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made, or affirmative relief sought by the cross complaint or answer of the defendant. If a provisional remedy has been allowed the undertaking must thereupon be delivered by the clerk to the defendant, who may have his action thereon;

2. By either party upon the written consent of the other;

3. By the court when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal;

4. By the court, when upon the trial and before the final submission of the case the plaintiff abandons it;

5. By the court upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions is made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

All other judgments are on the merits.

SEC. 456. In every case, other than those mentioned in the last section, judgment must be rendered on the merits.

CHAPTER II.

Judgment upon Failure to Answer.

SEC. 460. Judgment may be had, if the defendant fail to answer the complaint, as follows:

In what cases judgment may be had upon the failure of the defendant to answer.

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in Section two hundred and seventy-one (271);

2. In other actions, if no action has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk must enter the default of the defendant; and thereafter the plaintiff may apply, at the first, or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account, or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or part, the court may order the damages to be assessed by a jury; or, if to determine the amount of damages, the examination of a long account be involved, by reference, as above provided;

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration^{of} the time for answering, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court must thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the Territory, must require the plaintiff, or his agent, to be examined on oath respecting any payments that have been made to the plaintiff, or

to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

Issues.—The Mode of Trial and Postponement.

Issues defined
and the different
kinds.

SEC. 465. Issues arise upon the pleadings, when a fact or a conclusion of law is maintained by the one party, and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

Issue of law,
how raised.

SEC. 466. An issue of law arises upon a demurrer to the complaint, or answer, or to some part thereof.

Issue of fact,
how raised.

SEC. 467. An issue of fact arises:

1. Upon a material allegation in the complaint, controverted by the answer; and,
2. Upon new matters in the answer, except an issue of law is joined thereon.

Issue of law,
how tried.

SEC. 468. An issue of law must be tried by the court, unless it is referred upon consent.

Issues, by whom
tried and order
of trial.

SEC. 469. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where in these cases there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court subject to its power to order any such issue to be tried by a jury or to be referred to a referee, as provided in this Code.

Clerk must enter
causes on the
calendar to re-
main until dis-
posed of.

SEC. 470. The clerk must enter causes upon the calendar of the court according to the date of issue. Causes once placed on the calendar must remain upon the calendar from court to court, until finally disposed of; *Provided*, That causes may be dropped from the calendar by consent of parties, or by order of the court or judge, and may be again restored upon notice.

Parties may
bring issue to
trial.

SEC. 471. Either party may bring an issue to trial, or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may pro-

ceed with his case and take a dismissal of the action, or a verdict or judgment, as the case may require.

SEC. 472. A motion to postpone a trial, on the ground of the absence of evidence, can only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

Motion to postpone a trial for absence of testimony, requisites of.

SEC. 473. The party obtaining a postponement of a trial must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a judge or clerk of the court in which the case is pending, or before such other officer as the court may indicate, which must accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witnesses were produced. In actions involving the title to mining claims and quartz ledges, if it be made to appear to the satisfaction of the court that in order that justice may be done, and the action fairly tried on its real merits, it is necessary that further developments should be made, and that the party applying has been guilty of no laches and is acting in good faith, the court shall grant the postponement of the trial of the action, giving the party a reasonable time in which to prepare for trial. And in granting such postponement, the court may, in its discretion, annex as a condition thereto, an order that the party obtaining such postponement shall not, pending the trial of the action, remove from the premises in controversy any valuable quartz rock, earth or ores, and for any violation of an order so made, the court, or judge thereof, may punish for contempt, as in the cases of violation of an order of injunction, and may also vacate the order of postponement.

In cases of adjournment a party may have the testimony of any witness taken.

Court shall grant postponement in actions involving title to mining claims, when.

CHAPTER IV.

Trial by the Jury.

Jury, how
drawn.

SEC. 477. When the action is called for trial by jury, the clerk must draw from the trial jury box of the court, the ballots containing the names of the jurors, until the jury is completed or the ballots are exhausted.

Challenges,
peremptory, how
taken.

SEC. 478. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to three peremptory challenges. If no peremptory challenges are taken until the panel is full they must be taken by the parties alternately, commencing with the plaintiff.

Grounds of
challenge.

SEC. 479. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity within the third degree to either party;

3. Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner, or united in business with either party; or being surety on any bond or obligation for either party;

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action, or being then a witness therein.

5. Pecuniary interest on the part of the juror in the event of the action; or in the main question involved in the action; except his interest as a member or citizen of a municipal corporation;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action, or main question involved therein; *Provided*, That the reading of newspaper accounts of the subject matter before the court, shall not disqualify a juror either for bias or opinion;

7. The existence of a state of mind in the juror, evincing enmity against, or bias to or against either party.

SEC. 480. Challenges for cause must be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Challenges, how tried.

SEC. 481. As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between—the plaintiff, and—defendant, and a true verdict render according to the evidence.

Jury to be sworn

SEC. 482. When the jury has been sworn, the trial must proceed in the following order, unless the judge, for special reasons, otherwise directs:

Order of proceeding on trial.

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part;

2. The defendant may then open his defence, and offer his evidence in support thereof;

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the plaintiff must commence and may conclude the argument;

5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument;

6. The court may then charge the jury.

SEC. 483. In charging the jury, the court may state to them all matters of law it thinks necessary for their information in giving their verdict, and if it state the testimony of the case it must inform the jury that they are the exclusive judges of all questions of fact. The court must furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

Charge to the jury.

Court must furnish in writing, upon request, the points of law contained therein.

SEC. 484. Where either party asks special instructions to be given to the jury, the court must either give such instructions as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

Special instructions.

SEC. 485. When in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, in may order them to be conducted,

View by jury of the premises.

in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Admonition
when jury are
permitted to
separate.

SEC. 486. If the jury are permitted to separate, either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

Jury may take
with them cer-
tain papers.

SEC. 487. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Deliberation of
jury, how con-
ducted.

SEC. 488. When the case is finally submitted to the jury they may decide in court, or retire for deliberation. If they retire, they must be kept together in a room or or some other convenient place provided for them, under the charge of one or more officers, until they agree upon a verdict, or are discharged by the court. The officer must to the utmost of his ability keep the jury separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he must not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

May come into
court for further
instructions.

SEC. 489. After the jury have retired for deliberation if there be a disagreement between as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Proceedings in
case a juror
becomes sick.

SEC. 490. If, after the impaneling of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or

the jury may be discharged, and a new jury, then or afterwards, impaneled.

SEC. 491. In all cases where the jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried, immediately or at a future time, as the court may direct.

When prevented from giving verdict, the cause may be again tried.

SEC. 492. While the jury are absent the court may adjourn from time to time in respect to other business, but it is nevertheless open for every purpose connected with the cause submitted to the jury until a verdict is rendered, or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court, in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term discharges the jury.

While jury are absent court may adjourn from time to time.

Sealed verdict. Final adjournment discharges jury.

SEC. 493. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out.

Verdict, how declared.

Form of.

Polling the jury.

SEC. 494. When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

Proceeding when verdict is informal.

SEC. 495. The verdict of the jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

General and special verdicts defined.

SEC. 496. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases,

When a general or special verdict may be rendered.

the court may direct the jury to find a special verdict in writing, upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes. When a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

Verdict in actions for the recovery of money or on establishing a counter claim.

SEC. 497. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

Verdict in actions for specific personal property.

SEC. 498. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry of verdict.

SEC. 499. Upon receiving a verdict, an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length, and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

Trial by the Court.

Trial by jury, when and how waived.

SEC. 503. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery of specific real or personal property, with or without damages; and with the assent of the court, in other actions, in manner following:

1. By failing to appear at the trial;
2. By written consent, in person or by attorney, filed with the clerk;
3. By oral consent, in open court, entered in the minutes.

SEC. 504. Upon a trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty days after the cause is submitted for decision.

Decision of court on question of fact, when to be tried.

SEC. 505. In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

Facts found and conclusions of law must be separately stated; judgment on.

SEC. 506. Findings of fact may be waived by the several parties to an issue of fact:

Findings may be waived, how.

1. By failing to appear at the trial;
2. By consent in writing, filed with the clerk;
3. By oral consent in open court, entered in the minutes.

SEC. 507. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of Section four hundred and sixty (460), upon the failure to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered, as in that section provided.

Proceedings after determination of issue of law.

CHAPTER VI.

References and Trial by Referees.

SEC. 510. A referee may be ordered upon the agreement of the parties, filed with the clerk or entered in the minutes:

Reference ordered upon agreement of parties, in what cases.

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;

2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

SEC. 511. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

Reference ordered on motion, in what cases.

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein;

2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;

3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise in any stage of the action; or,

4. When it is necessary for the information of the court in a special proceeding.

Number of referees, qualifications, etc.

SEC. 512. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge must appoint one or more referees, not exceeding three, who reside in the district, in which the action or proceeding is triable, and against whom there is no legal objection.

Either party may object.

SEC. 513. Either party may object to the appointment of any person as referee on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;

2. Consanguinity or affinity within the third degree of either party;

3. Standing in relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party;

4. Having served as a juror or being a witness on any trial between the same parties for the same cause of action, or being then a witness in the cause;

5. Pecuniary interest on the part of such person in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, how disposed of.

SEC. 514. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and any person examined as a witness as to such objections.

SEC. 515. The referees must report their findings in writing to the court within twenty days after the testimony is closed, and the facts found and conclusions of law must be separately stated therein.

Referee to report within twenty days.

SEC. 516. The finding of the referee upon the whole issue, must stand as the finding of the court; and upon filing the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court.

Effect of referee's finding.

SEC. 517. The finding of the referee may be excepted to, and reviewed in like manner as if made by the court. When the reference is to report the facts, the findings reported has the effect of a special verdict.

How excepted to, etc

CHAPTER VII.

Exceptions.

SEC. 522. An exception is an objection upon a matter of law to a decision made either before or after judgment by a court, tribunal, judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in the next section.

Exception, what is.

When taken.

SEC. 523. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex-parte* application, and an order or decision made in the absence of a party, are deemed to have been excepted to.

What deemed excepted to.

SEC. 524. No particular form of exception is required, but when the exception is to the verdict or decision, upon the ground of the insufficiency of the evidence to justify it, the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or pro-

Exception, form of

ceeding may be copied, or the substance thereof stated or a reference thereto, sufficient to identify them may be made.

Bills of excep-
tions.

SEC. 525. A bill containing the exception to any decision may be presented to the court or judge for settlement at the time the decision is made, and after having been settled, shall be signed by the judge and filed with the clerk. When the decision excepted to is made by a tribunal other than a court, or by a judicial officer, the bill of exceptions shall be presented to and settled and signed by such tribunal or officer.

Bills of excep-
tions, prepara-
tion and
settlement of.

SEC. 526. When a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the court in which the action is pending, or a judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such service the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill, to the judge who tried or heard the case, upon five days' notice to the adverse party, or be delivered to the clerk of the court for the judge. When received by the clerk he must immediately deliver them to the judge, if he be in the district; if he be absent from the district, and either party desire the papers to be forwarded to the judge, the clerk must, upon notice in writing of such party, immediately forward them by mail or other safe channel; if not thus forwarded, the clerk must deliver them to the judge immediately after his return to the district. When received from the clerk, the judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated, the judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the judge or referee, for settlement, without notice to the adverse party.

Same.

Actions before a
referee.

It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the clerk.

SEC. 527. Exceptions to any decision made after judgment may be presented to the judge at the time of such decision, and be settled or noted, as provided in Section 525, and a bill thereof may be presented and settled afterwards, as provided in Section 526, and within like periods after the entry of the order, upon appeal from which such decision is reviewable.

Exceptions after judgment, etc.

SEC. 528. If the judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply, by petition, to the supreme court to prove the same. The application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by a justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause.

When exception is refused, application to supreme court to prove the same, etc.

SEC. 529. When the decision excepted to was made by any judicial officer other than a judge, the bill of exceptions shall be presented to such judicial officer, and be settled and signed by him, in the same manner as it is required to be presented to, settled and signed by a court or judge. A judge or judicial officer may settle and sign a bill of exceptions after, as well as before he ceases to be such judge or judicial officer. If such judge or judicial officer before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the supreme court may, by its orders or rules, direct. Judges, judicial officers, and the supreme court shall respectively possess the same power in settling and certifying statements, as is by this section conferred upon them in settling and certifying bills of exceptions.

When decision excepted to was made by other officer.

Proceedings where judge ceases to hold office, etc.

CHAPTER VIII.

New Trials.

New trial defined.

SEC. 533. A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, or court, or by referees.

When a new trial may be granted.

SEC. 534. The former verdict or other decision may be vacated, and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial;

2. Misconduct of the jury, and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any questions submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law occurring at the trial, and excepted to by the party making the application.

On what papers moved.

SEC. 535. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it must be made upon affidavit; for any other cause it may be made, at the option of the moving party, either upon the minutes of the court, or a bill of exceptions, or a statement of the case prepared as herein-after provided.

Notice of intention, when to be filed and what to contain.

SEC. 536. The party intending to move for a new trial, must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the

decision of the court or referee, if the action were tried without a jury, file with the clerk, and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the minutes of the court, or a bill of exceptions, or a statement of the case:

1. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending, or a judge thereof, may allow, file such affidavit with the clerk, and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party;

2. If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after serving of the notice, to prepare and obtain a settlement of a bill of exceptions, as is provided after the entry of judgment, or after receiving notice of such entry, as provided by Section 526, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion;

3. If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare a draft of the statement, and serve the same, or a copy thereof, upon the adverse party. If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same, or a copy thereof, upon the moving party. If the amendments be adopted, the statement shall be amended accordingly, and then presented to the judge who tried or heard the cause for settlement, or be delivered to the clerk of the court for the judge. If not adopted, the proposed statements and amendments shall, within ten days thereafter, be presented by the moving party to the judge, upon five days' notice to the adverse party, or delivered to the clerk of the court for the judge; and thereupon, the same proceedings for the settlement of the statement shall be taken by the parties, and the clerk and judge, as are required for the settlement of bills of exceptions by Section 526. If the action was heard by a referee, the same proceedings shall be had for the settle-

ment of the statement by him, as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or if served, are allowed, the proposed statement and amendments, if any, may be presented to the judge or referee, for settlement, without notice to the adverse party. When the notice of motion designates, as the ground of the motion, the insufficiency of the evidence to justify the verdict, or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates as the ground of the motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the judge, or referee, in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the judge or referee with his certificate to the effect that the same is allowed, and shall then be filed with the clerk;

4. When the motion is made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial and excepted to by the moving party, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

Motion, when to
be heard.

SEC. 537. The application for a new trial shall be heard at the earliest practicable period after notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases, after the affidavits, bill of exceptions, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

SEC. 538. The judgment roll and the affidavits, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the court in which the action is pending, or a judge thereof, may allow, and the same, or a copy thereof, be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same, or a copy thereof, upon the party appealing or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by Section 536, but the statement shall only contain the grounds argued before the court for a new trial, and so much of the evidence or other matters as may be necessary to explain them; and it shall be the duty of the judge to exclude all other evidence or matter from the statement.

What constitutes record to be used on appeal.

Subsequent statement.

SEC. 539. The verdict of a jury may also be vacated, and a new trial granted by the court, in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the court, or the evidence in the case, as to satisfy the court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion or prejudice. The order of the court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the court as provided in Section 538.

New trial by order of court.

Order, how reviewed.

SEC. 540. When the action is tried by a district judge, out of the county of his residence, the motion for a new trial may, upon the consent of the parties, be brought to a hearing before such judge at chambers, or in open court in any other county in the Territory.

Motion, when may be heard.

CHAPTER IX.

Manner of Giving and Entering Judgments.

Judgment to be entered in twenty-four hours, etc.

SEC. 545. When trial by jury has been had, judgment must be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration or grant a stay of proceedings.

Case may be brought before the court for argument.

SEC. 546. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

When counter claim established exceeds plaintiff's demand.

SEC. 547. If a counter claim established at the trial exceed the plaintiff's demand, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

In replevin, judgment to be in the alternative, and with damages.

SEC. 548. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or

to the use of another, judgment for the plaintiff must be made payable in the kind of money or currency so received by such person.

SEC. 549. The clerk must keep, with the records of the court, a book to be called the judgment book, in which judgments must be entered.

Judgment book to be kept by the clerk.

SEC. 550. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

If a party die after verdict, judgment may be entered, but not to be a lien.

SEC. 551. Immediately after entering the judgment the clerk must attach together and file the following papers, which constitute the judgment roll:

Judgment roll, what constitutes.

1. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service, and the complaint, with a memorandum endorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment;

2. In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the court or referee, all bills of exception taken and filed, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

SEC. 552. Immediately after filing the judgment roll the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the district, owned by him at the rendition of the judgment, in his own right. The lien shall continue for five years, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed on appeal by the execution of a sufficient undertaking as provided in this Code, in which case the lien of the judgment ceases.

Judgment lien, when it begins and when expires.

SEC. 553. The docket mentioned in the last section is a book which the clerk keeps in his office with each page divided into columns and headed as follows: judgment debtors; judgment creditors; judgment; time of entry;

Docket, how kept and what to contain.

when entered in judgment book; appeals; when taken; judgment of appellate court; satisfaction of judgment; when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in the docket in alphabetical order.

Docket to be open for inspection without charge.

SEC. 554. The docket kept by the clerk is open at all times during office hours for the inspection of the public without charge; the clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript to be filed in any county, and judgment to become a lien there.

SEC. 555. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for five years, unless the judgment be previously satisfied.

Satisfaction of judgment, how made.

SEC. 556. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor, or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment or make such indorsement, and upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

The Execution.

SEC. 560. The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement.

Within what time execution may issue.

SEC. 561. The writ of execution must be issued in the name of the people of the Territory of Utah; sealed with the seal of the court, and subscribed by the clerk, and be directed to the United States marshal, or to the sheriff of the county in which the writ is to be executed, and it must intelligibly refer to the judgment, stating the court, the district where the judgment roll is filed, the name of the parties, the judgment, and if it be for money the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency as provided in Section 548; the execution must also state the kind of money or currency in which the judgment is payable, and must require substantially as follows:

Who may issue the execution, its form, to whom directed, and what it shall require.

1. If it be against the property of the judgment debtor it must require the officer to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county in a judicial district other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter;

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the officer to satisfy the judgment with interest out of such property;

3. If it be against the person of the judgment debtor, it must require the officer to arrest such debtor, and commit him to the jail of the county until he pay the judgment with interest or be discharged according to law;

4. If it be issued on a judgment made payable in a specified kind of money or currency as provided in Section 548, it must also require the officer to satisfy the same in the kind of money or currency, in which said judgment is made payable, and the officer must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The officer collecting money or currency in the manner required by this Chapter must pay to the plaintiff or party entitled to recover the same the same kind of money or currency received by him, and in case of neglect or refusal so to do he shall be liable on his official bond to the judgment creditor in three times the amount of money so collected;

5. If it be for the delivery of the possession of real or personal property, it must require the officer to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits, recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

When made returnable.

SEC. 562. The execution may be made returnable at any time not less than ten, nor more than sixty days after its receipt by the officer, to the clerk with whom the judgment roll is filed. When the execution is returned the clerk must attach it to the judgment roll. If any real estate be levied upon, the clerk must record the execution and the return thereto at large, and certify the same under his hand as true copies, in a book to be called the "execution book," which book must be indexed with the names of the plaintiffs and defendants in execution, alphabetically

arranged, and kept open at all times during office hours for the inspection of the public without charge. It is evidence of the contents of the originals whenever they or any part thereof, may be destroyed, mutilated or lost.

SEC. 563. When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or in part. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith. When the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

Judgment, what
may direct.
Arrest of de-
fendant.

SEC. 564. In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings.

Execution, after
five years.

SEC. 565. Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

When execution
may issue
against the prop-
erty of a party
after his death.

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property or the enforcement of a lien thereon.

SEC. 566. Where the execution is against the property of the judgment debtor, it may be issued to the United States marshal or to the sheriff of any county in the Territory where the property may be situated. Where it requires the delivery of real or personal property, it must be issued to the United States marshal, or to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Execution, how
and to whom
issued.

SEC. 567. All goods, chattels, moneys, and other property both real and personal, or any interest therein of

What shall be liable to be seized in execution.

the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as on writs of attachment. Gold-dust and bullion must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy on personal property, it shall not be affected by the execution.

Not to be affected until a levy is made.

When property is claimed by a third party, how the right of property is tried.

SEC. 568. If the property levied on be claimed by a third person as his property, the officer may summon from the county six persons qualified as jurors between the parties to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, officer and the witnesses, must be paid by the claimant if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the officer, before the trial, the amount of his fees and the fees of the jury, and the officer must pay the same, less his own fees, to the prevailing party.

Property of married woman exempt from execution.

SEC. 569. All real and personal estate belonging to any married woman, at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

What exempt from execution.

SEC. 570. The following property is exempt from execution, except as herein otherwise specially provided:

Same.

1. Chairs, tables, desks and books, to the value of two hundred dollars, belonging to the judgment debtor;

2. Necessary household, table and kitchen furniture, belonging to the judgment debtor, to the value of three hundred dollars; also one sewing machine, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and portraits and their necessary frames, provisions, actually provided for individual or family use, sufficient for three months; two cows with their sucking calves, and two hogs and all sucking pigs;

3. The farming utensils or implements of husbandry of a farmer not exceeding in value the sum of three hundred dollars; also two oxen, or two horses, or two mules, and their harness, one cart or wagon, and food for such oxen, horses, cows or mules for sixty days; also, all seed grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars; Same.

4. The tools, tool-chest and implements of a mechanic or artisan, necessary to carry on his trade, not exceeding in value the sum of five hundred dollars; the notarial seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their scientific and professional libraries, and the law professional libraries and office furniture of attorneys, counselors and judges, and the libraries of ministers of the gospel; Same.

5. The cabin or dwelling of a miner not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools not exceeding in value two hundred dollars; Same.

6. Two oxen, two horses or two mules, and their harness; and a cart or wagon, one dray or truck, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse with vehicle and harness, or other equipments, used by a physician, surgeon or minister of the gospel, in making his professional visits, with hay and grain for said horse, sufficient for three months; Same.

7. One-half of the earnings of the judgment debtor for his personal services, rendered at any time within sixty days next preceding the levy of execution or levy of attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in this Territory, supported wholly or in part by his labors; Same.

8. All moneys, benefits, privileges, or immunities accruing, or in any manner growing out of any life insurance on the life of the debtor, if the annual premiums paid do not exceed five hundred dollars; Same.

9. All arms, ammunition, uniforms and accoutrements, required by law to be kept by any person; Same.

10. All court houses, jails, public offices and buildings, school houses, houses of public worship, lots, grounds and personal property appertaining thereto, the fixtures, Same.

furniture, books, papers and appurtenances belonging and pertaining to the court house, jail and public offices belonging to any county in this Territory, or for the use of schools or houses of public worship, and all cemeteries, public squares, parks and places, public buildings, town halls, public markets, buildings for the use of the fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company, now existing, or which may be under the laws of this Territory hereafter organized;

Same.

11. If the debtor be the head of a family, there shall be a further exemption of a homestead, to be selected by the debtor, consisting of lands, together with the appurtenances and improvements thereon, not exceeding in value the sum of one thousand dollars, for the judgment debtor, and the further sum of five hundred dollars for his wife and two hundred and fifty dollars for each other member of the family. If the homestead selected by the debtor is of a greater value than is exempted under this section, it shall be optional with the judgment debtor to permit the same to be partitioned or to be sold, and to receive in money the value of the homestead as provided in this section. If the debtor so elect, the homestead may be sold as other lands are sold on execution, and, after paying the debtor the value of the homestead, the balance of the money shall be applied upon the judgment; *Provided*, That the homestead shall not be sold if the officer do not receive a bid for a greater amount than the value of the homestead exempted in this section. If sold on the judgment, the money paid the debtor for the homestead shall be exempt from that or any other execution. If the officer having the execution, and the judgment debtor, cannot agree as to the value of the homestead, or the partition thereof, or as to the quantity and value of any of the articles of personal property in this section exempted, the officer shall select one person and the debtor another person, both being householders of the vicinity, to whom the officer shall administer an oath, to fairly and justly appraise and set apart the exempt property of the judgment debtor, concerning which there is a disagreement between him and the officer. If the disagreement relates to the value of the homestead, or to the partition thereof, the appraisers shall report to the officer their appraisal of the property selected for the homestead. If the debtor elect to have the property partitioned, it shall be

the duty of the appraisers to set apart such a homestead as the judgment debtor shall elect and be entitled to, under the provisions of this section. In case of the disagreement of the appraisers, they shall choose a third person, who shall also be sworn, and the decision of any two of said appraisers, when made, shall be final. The property not set apart as a homestead shall be subject to sale, under execution, the proceeds to be applied on the judgment. No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its purchase price, or any portion thereof, or upon a judgment or foreclosure of a mortgage or a mechanics' or laborers' lien thereon, or exempt from sale for taxes.

SEC. 571. The officer must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment; any excess in the proceeds over the judgment and accruing costs, must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Writ how executed.

SEC. 572. Before the sale of the property on execution, notice thereof must be given as follows:

Notice of sale, how given.

1. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct, or city, where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property;

2. In case of other personal property, by posting a similar notice in three public places of the precinct, or city where the sale is to take place, for not less than five, nor more than ten days;

3. In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct, or city, where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one;

4. When the judgment under which this property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

Selling without
notice, what
penalty attached

SEC. 573. An officer selling without the notice prescribed by the last section, forfeits five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits five hundred dollars.

Sale may be
postponed, when

SEC. 574. If, at the time appointed for the sale of any real or personal property on execution, the officer shall deem it expedient, and for the interest of all persons concerned, to postpone the sale for want of purchasers or other sufficient cause, he may postpone the same from time to time until the same shall be completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement be for a longer time than twenty-four hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

No proceedings
vacated by death
of officer.

SEC. 575. When an officer shall have begun to serve an execution, and shall die, or be incapable of completing the service and return thereof, the same may be completed by any other officer who might by law have executed the same if originally delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.

When officer
may serve execu-
tion after return
day.

SEC. 576. When an officer shall have begun to serve an execution issued out of any court of record, on or before the return day of such execution, he may complete the service and return thereof after such return day.

Sales, how con-
ducted.

SEC. 577. All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution, nor his deputy, can become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it must

Neither the offi-
cer nor his dep-
uty to be a pur-
chaser.

be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. All sales of real property must be made at the court house of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the officer must follow such directions.

Real and personal property, how sold.

Judgment debtor if present may direct order of sale, and the officer shall follow his direction.

SEC. 578. If a purchaser refuse to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Proceedings on refusal of purchaser to pay purchase money

SEC. 579. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

When sheriff may refuse bid.

SEC. 580. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Two preceding sections not to make officer liable, etc.

SEC. 581. When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale shall deliver to the purchaser the property, and if desired, execute and deliver to him a certificate of the sale and payment. Such certificate conveys to the purchaser all the right, title and interest which the debtor had in and to such property on the day the execution was levied.

Personal property not capable of manual delivery, how delivered to purchaser.

SEC. 582. When the purchaser of any personal property, not capable of manual delivery, pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale and payment. Such certificate conveys to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution or attachment was levied.

Personal property not capable of manual delivery, how sold and how delivered.

SEC. 583. Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor thereto; and when

Real property, when absolute sale or not.

In the latter case, what the certificate must contain.

the estate is less than a leasehold of two years unexpired term, the sale is absolute. In all other cases, the real property is subject to redemption as provided in this Chapter. The officer must give to the purchaser a certificate of the sale, containing:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it must be so stated, and when the judgment, under which the sale has been made payable in a specified kind of money or currency, the certificate must also state the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the recorder of the county.

Real property so sold, by whom it may be redeemed.

SEC. 584. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are in this Chapter termed redemptioners.

When it may be redeemed, and redemption money.

SEC. 585. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, (in the kind of money or currency specified in the judgment, if any be specified,) with six per cent. thereon in addition, together with the amount of any assessment, or taxes, which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a lien prior to that of a redemptioner, other than the judgment under which the purchase was made, the amount of such lien, with interest.

When judgment debtor or other redemptioner may redeem.

SEC. 586. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, and within six months after the sale, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with three per cent. thereon in addition and the amount of any assessment, or tax, which the last redemptioner may have paid thereon

after the redemption by him, with interest on such amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment, under which the property was sold, need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and within six months after the sale, on paying the sum paid on the last previous redemption with three per cent. thereon in addition, and the amount of any assessments, or taxes, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. Written notice of redemption must be given to the officer, and a duplicate filed with the recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has, or acquires any lien, other than that upon which the redemption was made, notice thereof must in like manner be given to the officer, and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption by a redemptioner has expired, and the last redemptioner, or his assignee, is entitled to deed from the officer, at the expiration of six months after the sale; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer, authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of sale.

Notice of
redemption.

Conveyance.

In the case of redemption to whom the payments are to be made.

SEC. 587. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale. When the judgment, under which the sale has been made, is payable in a specified kind of money, or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

What a redemptioner must do in order to redeem.

SEC. 588. A redemptioner must produce to the officer, or person, from whom he seeks to redeem, and serve with his notice to the officer:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or recorder of the county where the judgment is docketed or filed; or if he redeem upon a mortgage, or other lien, a note of the record thereof certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of subscribing witnesses thereto; and,

3. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

Until the expiration of redemption time court may restrain waste on the property.

SEC. 589. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser, or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family while he occupies the property.

What is not considered waste.

SEC. 590. The purchaser from the time of sale until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive from the tenant in possession, the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid, and if the redemptioner or judgment debtor before the expiration of the time allowed for such redemption, demands in writing of such purchaser

Rents and profits.

or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus revived, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within sixty days after said demand, bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

SEC. 591. If the purchaser of real property sold on execution, or his successors in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid with interest, from the judgment creditor. If the purchaser of property at an officer's sale or his successor in interest fail to recover possession in consequence of irregularity in the proceedings concerning the sale or because the property sold was not subject to execution and sale, the court having jurisdiction thereof, must, after notice, and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

If purchaser of real property be evicted for irregularities in sale, what he may recover and from whom.

When judgment to be revived.

SEC. 592. When upon an execution against several persons, more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security, for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying, or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his pay-

Party who pays more than his share may compel contribution.

ment and claim to contribution or repayment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

CHAPTER II.

Proceedings Supplementary to the Execution.

Debtor required to answer concerning his property, when.

SEC. 594. When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment issued to a proper officer is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court requiring such judgment debtor to appear, and answer upon oath concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a judge, or referee, out of the judicial district in which he resides.

Proceedings to compel debtor to appear.

SEC. 595. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the court, or the judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court, or judge, may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or referee appointed by him, to answer concerning the same, and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the United States marshal, or the sheriff of the county, to arrest the debtor, and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time, before the judge or referee, as may be directed during the pendency of the proceedings, and until the final determination thereof, and will not, in the meantime, dispose of any portion of his property not exempt from execution.

In what cases he may be arrested.

What bail may be given.

In default of entering into such undertaking, he may be committed to prison.

SEC. 596. After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor, may pay to the officer the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt is a sufficient discharge for the amount so paid.

Any debtor of the judgment debtor may pay the latter's creditor.

SEC. 597. After the issuing, or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Examination of debtors of judgment debtors, or of those having property belonging to him.

SEC. 598. Witnesses may be required to appear and testify before the judge, or referee, upon any proceeding under this Chapter in the same manner as upon the trial of an issue.

Witnesses required to testify.

SEC. 599. The judge, or referee, may order any property of the judgment debtor not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Judge may order property to be applied on execution.

SEC. 600. If it appears that a person, or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property, adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person, or corporation, for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer, or other disposition of such interest, or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor

SEC. 601. If any person, party, or witnesses, disobey an order of the referee, properly made in the proceedings before him under this Chapter, he may be punished by the court, or judge, ordering the reference, for a contempt. When the judgment requires the person against

Disobedience of orders. how punished.

When court
must issue con-
veyance.

whom it is rendered to execute and deliver to any other person, a conveyance of any specific feal property, and the person against whom it is rendered, shall refuse or neglect to execute and deliver said conveyance for five days after the service upon him of a certified copy of such judgment, or if he is absent or concealed, so that service of such certified copy can not be had, upon proof, satisfactory to the court, that such service has been made, or that it cannot be made by reason of such absence or concealment, the person entitled to the conveyance may obtain from the court an order that the certified copy of the judgment, together with the order, be recorded by the recorder of deeds of the county where the real property is situated, and when recorded, it shall give to the person entitled to such conveyance a right to the possession of the real property described in the judgment, and to hold the same according to the terms of the conveyance ordered, in like manner as if it had been conveyed in pursuance of the judgment. The recording of any judgment as above provided, shall not prevent the court rendering such judgment from enforcing the same by any proper procees, according to the course of proceedings therein.

TITLE X.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

Actions for Foreclosure of Mortgages.

Proceedings in
foreclosure
suits.

SEC. 606. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of

this Chapter. In such action the court may, by its judgment, direct a sale of the encumbered property, or so much thereof as may be necessary and the application of the proceeds of the sale to the payment of the costs of the court and that expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under execution; and if it appear from the return of the officer making the sale that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants, personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases, on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office, at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance, or lien as if he had been made a party to the action.

SEC. 607. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Surplus money
to be deposited
in court.

SEC. 608. If the debt for which the mortgage, lien, or incumbrance is held, is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease, and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Proceedings,
when debt
secured falls
due at different
times.

CHAPTER II.

Action for Nuisance, Waste and Willful Trespass in Certain Cases, on Real Property.

Nuisance defined, and actions for.

SEC. 612. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Waste, actions for.

SEC. 613. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass for cutting or carrying away trees, etc., actions for.

SEC. 614. Any person who cuts down, or carries off, any wood or underwood, tree or timber, or girdles, or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

Measure of damages in certain cases under the last sections.

SEC. 615. Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land, or adjoining it.

Damages in actions for forcible entry, etc., may be trebled.

SEC. 616. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

Actions to Determine Conflicting Claims to Real Property, and Other Provisions Relating to Actions Concerning Real Estate.

SEC. 620. An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim.

Parties to an action to quiet title.

SEC. 621. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

When plaintiff cannot recover costs.

SEC. 622. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

SEC. 623. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

When value of improvements can be allowed as a set off.

SEC. 624. The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or a judge thereof, may, on motion, or upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, and of any tunnels, shafts or drifts thereon, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

An order may be made to allow a party to survey and measure the land in dispute.

SEC. 625. The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make

Order, what to contain and how served. When party surveying to be liable for injury done.

such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

A mortgage must not be deemed a conveyance, whatever its terms.

SEC. 626. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

When court may grant injunction: during foreclosure, etc.

SEC. 627. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution, before a conveyance.

Damages may be recovered for injury to the possession after sale, etc.

SEC. 628. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before the possession is delivered under the conveyance.

Action not to be prejudiced by alienation pending suit.

SEC. 629. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Mining claims, actions concerning to be governed by local rules.

SEC. 630. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established, and in force at the bar, diggings or camp embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, or of the United States, must govern the decision of the action.

CHAPTER IV.

Actions for the Partition of Real Property.

Who may bring action for partition.

SEC. 635. When several co-tenants hold, and are in possession of real property, as parceners, joint tenants or as tenants in common, in which one or more of them have an estate of inheritance, or for life, or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 636. The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint, specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact must be set forth in the complaint.

Interest of all parties must be set forth in the complaint.

SEC. 637. No person having a conveyance of or claiming a lien on the property, or some part of it, need be made a party to the action unless such conveyance or lien appear of record.

Stockholders not of record need not be made parties.

SEC. 638. Immediately after filing the complaint in the district court, the plaintiff must file with the recorder of the county, or of the several counties in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Plaintiff must file notice of complaint, or of pendency of the action.

SEC. 639. The summons must be directed to all the joint tenants, and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof, and generally to all persons unknown who have or claim any interest in the property.

Summons must be directed to all persons interested in the property.

SEC. 640. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

Unknown parties may be served by publication.

SEC. 641. The defendants who have been personally served with the summons, and a certified copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly, the origin, the nature, and the extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon, also whether the same has been secured in any other way or not, and if secured, the extent

Answer of defendants, what to contain.

and nature of such security, or they are deemed to have waived their rights to such lien.

The rights of all parties may be ascertained in the action.

SEC. 642. The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title must be ascertained by proof, to the satisfaction of the court, before the judgment of sale can be made, and where service of the complaint has been made by publication, like proofs must be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Partial partition.

SEC. 643. Whenever from any cause it is in the opinion of the court, impracticable, or highly inconvenient to make a complete partition, in the first instance, among all the parties in interest, the court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a partition to be made, as if such original co-tenants were the parties, and sole parties in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition, separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof as they may desire.

Lienholders must be made parties, or a referee appointed to ascertain their rights.

SEC. 644. If it appears to the court by the certificate of the county recorder, or clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens, or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens on incumbrances severally held by such persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner; if secured, the nature and extent of the security.

SEC. 645. The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place to make proof, by his own affidavit, or otherwise, of the amount due or to become due, contingently or absolutely, thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon must be made to the court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

Lienholders must be notified to appear before the referee appointed.

SEC. 646. If it be alleged in the complaint, and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

The court may order a sale or partition and appoint referees therefor.

SEC. 647. In making the partition, the referees must divide the property and allot the several portions thereof to the respective parties; quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, pursuant to the provisions of this Chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants to aid them.

Partition must be made according to the rights of the parties as determined by the court.

SEC. 648. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party, with a particular description of each share.

Referees must make a report of their proceedings.

SEC. 649. The court may confirm, change, modify, or set aside the report, and, if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive:

The court may set aside or affirm report, and enter judgment thereon.

Upon whom
judgment to be
conclusive.

1. On all persons named as parties to the action, and their legal representatives who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

2. On all persons interested in the property who may be unknown, to whom notice has been given of the action for partition by publication; and,

3. On all other persons claiming from such parties or persons, or either of them. And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent, as if it had been entered before his death.

Judgment not to
affect tenants
for years less
than ten, etc.

SEC. 650. The judgment does not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

Expenses of par-
tition must be
apportioned
among the
parties.

SEC. 651. The expenses of the referees, including those of the surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

A lien on an un-
divided interest
of any party is a
charge only on
share assigned
to such party.

SEC. 652. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall henceforth be a charge only on the share assigned to such party, but such share must be first charged, with its just proportion of the costs of the partition, in preference to such lien.

Estate for life
or years may be
set off in a part
of the property
not sold, etc.

SEC. 653. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of
proceeds of sale
of incumbered
property.

SEC. 654. The proceeds of the sale of the encumbered property must be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action;
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens

in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;

4. The residue among the owners of the property sold, according to their respective shares therein.

SEC. 655. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just reduction to be made from the amount of the lien on the property on account thereof.

Party holding other securities may be required first to exhaust them.

SEC. 656. The proceeds of sale, and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court.

Proceeds of sale, disposition of.

SEC. 657. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action.

When paid into court the cause may be continued for the determination of the claims of the parties.

SEC. 658. All sales of real property, made by referees under this Chapter, must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that must be stated in the notice.

Sale by referees must be at public auction.

SEC. 659. The court must in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, minors, or parties out of the Territory.

The court must direct the terms of sale on credit.

SEC. 660. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of

Referees may take securities for purchase money.

any known owner of full age, in the name of such owner and for the shares of a minor in the name of the guardian of such minor, and for other shares, in the name of the clerk of the court, and his successors in office.

Tenants whose estate has been sold shall receive compensation.

SEC. 661. The person entitled to a tenancy for life or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

The court may fix such compensation.

SEC. 662. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in the court for him, as the case may require.

The court must protect parties unknown.

SEC. 663. If the person entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

The court must ascertain and secure the value of future contingent or vested interests.

SEC. 664. In all cases of sales, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale must be made known at the time. Lots must be sold separately.

SEC. 665. In all cases of sales of property, the terms must be made known at the time, and if the premises consist of distinct farms or lots, they must be sold separately.

Who may not be purchasers.

SEC. 666. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of a minor party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the minor. All sales contrary to the provisions of this section are void.

Referees must make a report of the sale to the court.

SEC. 667. After completing a sale of the property, or any part thereof ordered to be sold, the referee must report the same to the court, with a description of the different parcels of land sold to each purchaser; the name

of the purchaser; the price paid or secured; the terms and conditions of the sale; and the securities, if any, taken. The report must be filed in the office of the clerk of the court.

SEC. 668. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take such securities pursuant to such sale; which they are hereby authorized to do. Such order may also give direction to them respecting the disposition of the proceeds of the sale.

If confirmed, conveyances may be executed

SEC. 669. When a party is entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Proceeding if a lienholder become a purchaser.

SEC. 670. The conveyances must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

Conveyances must be recorded and will be a bar against parties.

SEC. 671. When there are proceeds of a sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same must be invested in securities at interest for the benefit of the persons entitled thereto.

Proceeds of sale belonging to parties unknown, how to be invested.

SEC. 672. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the recorder of the county where the papers are filed, and his successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

Investment must be made in the name of.

SEC. 673. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of, and payable to, the parties respectively entitled thereto, and must be delivered to such parties upon their receipt therefor. Such

When the interests of the parties are ascertained securities must be taken in their names.

agreement and receipt must be returned and filed with the clerk.

Duties of making investments.

SEC. 674. The recorder in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and must deposit with the county treasurer all securities taken, and keep an account in a book provided and kept for that purpose, in the recorder's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

When unequal partition is ordered.

SEC. 675. When it appears that partition cannot be made equally between the parties according to their respective rights, without prejudice to the rights and interest of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by a minor, unless it appears that such minor has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

Compensation may be adjudged in certain cases.

The share of an infant may be paid to his guardian.

SEC. 676. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

The guardian of an insane person may receive the proceeds of such party's interest.

SEC. 677. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referees, on executing with sufficient sureties an undertaking approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

A guardian may consent to partition without action, and execute releases.

SEC. 678. The general guardian of a minor, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a par-

tion without action, and agree upon the share to be set off to such minor, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

SEC. 679. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Costs of partition a lien upon the shares of the parcnerns.

SEC. 680. The court with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this Chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

The court by consent may appoint a single referee.

SEC. 681. If it appear that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common, for the protection, confirmation, or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned, the court shall allow to the parties of the action who have paid the expenses of such litigation or other proceedings, all the expenses necessarily incurred therein, including counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the said expenditures, and the same must be pleaded and allowed by the court and included in the final judgment, and shall be a lien upon the share of each tenant, respectively, in proportion to his interest, and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

In actions by one of tenants in common, court may allow expenses, etc.

SEC. 682. If it appear to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any one of the defendants shall have had such abstract

Abstract of title.

afterward made, the cost of the abstract with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed. Whenever such abstract is procured by the plaintiff before the commencement of the action, he must file with his complaint a notice that an abstract of the title has been made, and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action, and any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished. The court, or the judge thereof, may direct, from time to time, during the progress of the action, who shall have the custody of the abstract.

Who may make
abstract,

SEC. 683. The abstract mentioned in the last preceding section may be made by any competent searcher of records, and need not be certified by the recorder or other officer, but instead thereof, it must be verified by the affidavit of the person making it, to the effect that he believes it to be correct; but the same may be corrected, from time to time, if found incorrect, under the directions of the court.

Interest to be
allowed on dis-
bursements.

SEC. 684. Whenever, during the progress of the action for partition, any disbursement shall have been made, under the direction of the court, or the judge thereof, by a party thereto, interest must be allowed thereon from the time of making such disbursement.

CHAPTER V.

Action for the Usurpation of an Office or Franchise.

Action may be
brought
against any
party usurping,
etc., any office
or franchise.

SEC. 691. An action may be brought in the name of the people of this Territory against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this Territory, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the Territory, by the United States dis-

strict attorney; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

SEC. 692. Whenever such action is brought in the name of the people of the Territory, the prosecuting officer at the request of the person entitled to the office or franchise, in addition to the cause of action in behalf of the people of the Territory, may set forth the name of the person so entitled, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the judge, or court wherein the case is pending, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights, and liabilities, as in other civil actions where the defendant is subject to arrest.

Name of person entitled to office may be set forth in the complaint

SEC. 693. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as the form of the action and justice may require.

Judgment may determine the rights of both incumbent and claimant.

SEC. 694. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

When rendered in favor of applicant.

SEC. 695. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

Damages may be recovered by successful applicant.

SEC. 696. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

When several persons claim the same office, etc.

SEC. 697. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, fran-

If defendant found guilty, what judgment to be rendered against him.

chise or privilege, judgment must be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay costs of the action. The court may also, in its discretion, in actions to which the people of the Territory are a party, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected must be paid into the treasury of the Territory.

Undertaking
when required in
actions for usur-
pation.

SEC. 698. When the action is brought upon the information or application of a private party, the prosecuting officer may require such party to enter into an undertaking, with sureties to be approved by the said officer, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

TITLE XI.

OF PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

Place of Trial of Actions in Justices' Courts.

Actions, when
may be com-
menced.

SEC. 701. Actions in justices' courts must be commenced subject to the right to change the place of trial, as in this Chapter provided, and must be tried:

1. If there is no justice's court for the precinct or city in which the defendant resides, in any city or precinct of the county in which he resides;

2. When two or more persons are jointly, or jointly and severally bound in any debt or contract, or otherwise

jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties; in the precinct or city in which any of the persons liable may reside;

3. In cases of injury to the person or property; in the precinct or city where the injury was committed, or where the defendant resides;

4. If for the recovery of personal property or the value thereof, or damages for taking or detaining the same, in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendants reside;

5. When the defendant is a non-resident of the county, in any precinct or city wherein he may be found;

6. When the defendant is a non-resident of the Territory, in any precinct or city in the Territory;

7. When a person has contracted to perform an obligation at a particular place, and resides in another county, precinct or city, in the precinct or city in which such obligation is to be performed, or in which he resides;

8. When the parties voluntarily appear and plead without summons, in any precinct or city in the Territory;

9. In all other cases: In the precinct or city in which the defendant resides.

SEC. 702. The court may at any time before the trial, on motion, change the place of trial in the following cases:

Place of trial
may be changed
in certain cases.

1. When it appears to the satisfaction of the justice before whom the action is pending, by affidavit of either party, that such justice is a material witness for either party;

2. When either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before such justice, by reason of the interest, prejudice, or bias of the justice;

3. When from any cause the justice is disqualified from acting;

4. When the justice is sick or unable to act.

SEC. 703. The place of trial cannot be changed on motion of the same party more than once, upon any or all the grounds specified in the first and second subdivisions of the preceding section.

Limitation on
the right to
change.

SEC. 704. When the court orders the place of trial to be changed, the action must be transferred for trial to a court the parties may agree upon, and if they do not so agree, then to another justice's court in the same county.

To what court
transferred.

Proceedings after
order changing
place of trial.

SEC. 705. After an order has been made, transferring the action for trial to another court, the following proceedings must be had:

1. The justice ordering the transfer, must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying, of all costs that have accrued, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein;

2. Upon the receipt by him of such papers, the justice of the court to which the case is transferred, must issue a notice, stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial.

Effect of order
changing place
of trial.

SEC. 706. From the time of the order changing the place of trial is made, the court to which the action is thereby transferred, has the same jurisdiction over it as though it had been commenced in such court.

Transfer of cases
to the district
court.

SEC. 707. The parties to an action in a justice's court, cannot give evidence upon any questions which involve the title or possession of real property, nor can any issue presenting such question be tried by such court, and if it appear from the answer of the defendant, verified by his oath or that of his agent or attorney, that the determination of the action will necessarily involve the question of title or possession to real property, the justice must suspend all further proceedings in the action, and certify the pleadings, and if any of the pleadings are oral, a transcript of the same, from his docket to the clerk of the district court of the district in which said justice's precinct is situated, and from the time of filing such pleadings or transcript with the clerk, the district court has over the action the same jurisdiction as if it had been commenced therein; *Provided*, That in cases of forcible entry and detainer, of which justices' courts have jurisdiction, any evidence otherwise competent, may be given, and any question properly involved therein, may be determined.

CHAPTER II.

Manner of Commencing Actions in Justices' Courts.

SEC. 712. An action in a justice's court is commenced by filing a complaint.

Actions, how commenced.

SEC. 713. The court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter, the plaintiff may have summons issued.

Summons may issue within a year.

SEC. 714. At any time after the complaint is filed, the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Defendant may waive summons.

SEC. 715. Parties in justices' courts may appear and act in person, or by attorney, and any person except the officer by whom the summons or jury process was served, may act as attorney.

Parties may appear in person or by attorney.

SEC. 716. When a minor, insane, or incompetent person is a party, he must appear either by his general guardian, if he have one, or by a guardian *ad litem* appointed by the justice. When a guardian *ad litem* is appointed by the justice, he must be appointed as follows:

When guardian necessary, how appointed.

1. If the minor, insane, or incompetent person be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane, or incompetent, upon the application of a relative or friend;

2. If the minor, insane, or incompetent person be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the minor if he be of the age of fourteen years, and apply at the time or before the summons is returned. If he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend or any other party to the action, or by the justice on his own motion.

SEC. 717. The summons must be directed to the defendant, and signed by the justice, and must contain:

Summons, how issued, directed, and what to contain.

1. The title of the court, name of the county and city or precinct in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him;

3. A direction that the defendant appear and answer before the justice, at his office, as specified in Section 718 of this Code;

4. In an action arising on a contract for the recovery of money or damages only, a notice that unless the defendant so appear and answer, the plaintiff will take judgment for the sum claimed by him (stating it);

5. In other actions, a notice that unless the defendant so appear and answer, the plaintiff will apply to the court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed upon the summons.

Time for appearance of defendant.

SEC. 718. The time specified in the summons for the appearance of the defendant must be as follows:

1. If an order of arrest is indorsed upon the summons, forthwith;

2. In all other cases, the summons must contain a direction that the defendant must appear and answer the complaint within five days, if the summons is served in the city or precinct in which the action is brought; within ten days, if served out of the precinct or city, but in the county in which the action is brought; and within twenty days, if served elsewhere.

Alias summons

SEC. 719. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date.

Same.

SEC. 720. The justice may, within a year from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff.

Summons, limitations on service of.

SEC. 721. The summons cannot be served out of the county in which the action is commenced, except, when the action is brought upon a joint contract or obligation of two or more persons, who reside in different counties, and the summons has been served upon the defendant, resident of the county, in which case the summons may be served upon the other defendant out of the county; and except, also, when an action is brought against a party who has contracted to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides; and except, also, where an action is brought for injury to person or property, and the defendant resides in a different county; in which case summons may be served in the county where

the defendant resides. When the defendant resides in the county where the action is brought, the summons cannot be served within two days of the time fixed for the appearance of the defendant; when he resides out of the county, and the summons is served out of the county, the summons cannot be served within five days of such time.

SEC. 722. The summons may be served by any sheriff of the county, or constable of the precinct, or marshal of the city, in which the service is made; or by any male resident, over the age of twenty-one years, not a party to the suit, within the county wherein the action is brought, and must be served and returned, as provided in actions commenced in the district court; or it may be served by publication, and the sections of this Code providing for the publication of summons issued out of the district court, are applicable to the justice's court, the necessary changes and substitutions being made therein.

Summons, by whom and how served.

SEC. 723. When all the parties served with process shall have appeared, or some of them have appeared, and the remaining defendants have made default, the justice must fix a day for the trial of said cause, and notify the plaintiff and the defendant who have appeared, thereof. The parties are entitled to one hour in which to appear, after the time fixed in the summons, but are not bound to remain longer than that time unless both parties have appeared, and the justice being present, is engaged in the trial of another cause.

When justice may fix day for trial.

Hours of appearance.

CHAPTER III.

Pleadings in Justices' Courts.

SEC. 728. Pleadings in a justice's court:

1. Are not required to be in a particular form; but must be such as to enable a person of common understanding to know what is intended;
2. May, except the complaint, be oral or in writing;
3. Need not be verified unless otherwise provided in this Code;
4. If in writing, must be filed with the justice;
5. If oral, an entry of their substance must be made in the docket.

Form of pleading.

- Pleadings. SEC. 729. The pleadings are:
1. The complaint of the plaintiff;
 2. The demurrer to the complaint;
 3. The answer by the defendant;
 4. The demurrer to the answer.
- Complaint defined. SEC. 730. The complaint in justices' courts is a concise statement in writing of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.
- When may demur. SEC. 731. The defendant may at any time before answering, demur to the complaint.
- Answer. SEC. 732. The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or counter claim, upon which an action might be brought by the defendant against the plaintiff in a justice's court.
- If the defendant omits to set up counter claim. SEC. 733. If the defendant omit to set up a counter claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.
- When plaintiff may demur to answer. SEC. 734. When the answer contains new matter in avoidance, or constituting a defense or a counter claim, the plaintiff may, at any time before trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.
- Proceedings on demurrer. SEC. 735. The proceedings on demurrer are as follows:
1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint;
 2. If the demurrer to a complaint is overruled, the defendant may answer forthwith;
 3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the court may allow;
 4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.
- Amendment of pleadings. SEC. 736. Either may, at any time before the conclusion of the trial, amend any pleading, but if the amendment is made after the issue, and it appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will by the

amendment be rendered necessary, require, as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within ten days after the entry of the judgment and upon an affidavit showing good cause therefor.

SEC. 737. When the pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days, as the court may allow.

Answer or demurrer, to amended pleadings.

CHAPTER IV.

Provisional Remedies in Justices' Courts.

SEC. 742. An order to arrest the defendant may be indorsed on a summons issued by a justice, and the defendant may be arrested thereon by the sheriff, constable, or city marshal, at the time of serving the summons, and brought before the justice, and detained until duly discharged, in the following cases:

Order of arrest, and arrest of defendant.

1. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Territory, with intent to defraud his creditors;

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity;

3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought;

4. When the defendant has removed, concealed or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female can be arrested in any civil action.

SEC. 743. In cases under the first subdivision of the preceding section, or when the defendant is about to depart from the Territory, the order of arrest may be executed, and the defendant arrested in any county in the Territory.

Order executed in any part of the Territory

Affidavit and undertaking for order of arrest.

SEC. 744. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the justice a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

A defendant arrested must be taken before the court immediately.

SEC. 745. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action, the officer must immediately take the defendant before a justice of that or an adjoining precinct of the county, who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

The officer must give notice to the plaintiff of arrest.

SEC. 746. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest and of his giving notice to the plaintiff.

The officer must detain the defendant.

SEC. 747. The officer making the arrest must keep the defendant in custody until duly discharged by order of the justice.

Writ of attachment shall issue upon affidavit.

SEC. 748. A writ to attach the property of the defendant must be issued by the justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or in behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment out of the district court.

Undertaking on attachment must be required.

SEC. 749. Before issuing the writ the justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant receives judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ of attachment, substance of.

SEC. 750. The writ may be directed to the sheriff or any constable of the county, or the sheriff of any other county, and must require him to attach and safely keep all

the property of the defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking.

Officer may take an undertaking instead of levying.

SEC. 751. The sections of this Code providing for attachments out of the district courts except as in this Chapter expressly provided, are applicable to attachments issued out of justices' courts; the necessary changes and substitutions being made therein.

Certain provisions of Code apply to.

SEC. 752. In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons, or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this Code providing the practice in proceedings for claim and delivery of personal property in the district court, are applicable to like proceedings in justice's courts, the necessary changes and substitutions being made therein.

How claim and delivery enforced

CHAPTER V.

Defaults, Postponements, Trials and Judgments in Justices' Courts.

SEC. 757. When the defendant fails to appear and answer or demur at the time specified in the summons, or within one hour thereafter, the justice must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum (not exceeding the amount stated in the summons) as appears by such evidence to be just.

Judgment when defendant fails to appear.

SEC. 758. In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

Judgment against defendant on demurrer.

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the court;

2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once;

3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

Time when
trial must be
commenced.

SEC. 759. Unless postponed as provided in this Chapter, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of the defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

When court
may of its own
motion postpone
trial.

SEC. 760. The court may, of its own motion, postpone the trial:

1. For not exceeding one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action;

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary;

3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

Postponement
by consent.

SEC. 761. The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Postponement
upon application
of a party.

SEC. 762. The trial may be postponed upon the application of either party, for a period not exceeding four months:

1. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so;

2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody; but the action may proceed notwithstanding, and the defendant is subject to arrest on execution, in the same manner as if he had not been discharged;

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that

the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the justice must order the defendant to be discharged from custody;

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the justice, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced; but the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

SEC. 763. No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking in an amount fixed by the court, with two sureties, to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

No continuance for more than ten days to be granted unless upon filing of undertaking.

SEC. 764. Issues arise upon the pleadings, when a fact or conclusion of law is maintained by one party and is controverted by the other. They are of two kinds: 1, of law; and, 2, of fact.

Issues defined, and the different kinds.

SEC. 765. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of law, how raised.

SEC. 766. An issue of fact arises:

Issue of fact, how raised.

1. Upon a material allegation in the complaint controverted by the answer; and,

2. Upon new matter in the answer, except an issue of law is joined thereon.

SEC. 767. An issue of law must be tried by the court.

Issue of law, how tried.

SEC. 768. An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

Issue of fact, how tried.

SEC. 769. A jury may be waived:

1. By consent of parties, entered in the docket;

Jury, how waived.

2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact;

3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

Either party failing to appear.

SEC. 770. If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

Challenges to jurors.

SEC. 771. The challenges are either peremptory, or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth as grounds for such challenge in the district court. Challenges for cause must be tried by the court.

Manner of pleading a written instrument.

SEC. 772. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to the adverse party, at such time as may be fixed in the order; or if such order is not obeyed, the account or instrument cannot be given in evidence.

If a copy of an instrument be filed, the signatures deemed admitted.

SEC. 773. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, the original, or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically denies the same in his answer, and verify the answer by his oath.

Judgment by confession.

SEC. 774. Judgments upon confession may be entered up in any justice's court specified in the confession in any amount of which the justice has jurisdiction.

Judgment of dismissal.

SEC. 775. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter;

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court;

4. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and

does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

SEC. 776. When a trial by a jury has been had, judgment must be entered by the justice at once in conformity with the verdict. Judgment upon verdict.

SEC. 777. When the trial is by the court, judgment must be entered at the close of the trial, or within two days thereafter. Judgment after trial by the court

SEC. 778. The judgment in justices' courts must be entered substantially in the form required by Section 548 of this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment. Judgment, how entered when defendant subject to arrest.

SEC. 779. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue. If the sum found due exceeds the jurisdiction, etc.

SEC. 780. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued, but if he does not accept such offer before the trial, and fail to recover in the action a sum in excess of the offer, he can not recover costs, but costs must be adjudged against him from the time of the offer, and if he recover, be deducted from his recovery. But the offer and failure to accept it can not be given in evidence to affect the recovery otherwise than as to costs. Offer to compromise before trial

SEC. 781. The justice must tax and include in the judgment, the costs allowed by law to the prevailing party. Costs must be included in the judgment.

SEC. 782. The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the fact): Abstract of judgment.

Territory of Utah, County of——. ———plaintiff vs. ———defendant, in justice's court before——, justice of the peace,——precinct or city,——188—, (insert date of abstract) judgment entered for plaintiff, (or defendant) for \$——on the——day of——, 188—. I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the court of——justice of the peace, as appears by his docket now in my possession as his successor in office.

————Justice of the Peace.

Abstract may be
filed and dock-
eted in clerk's
office

SEC. 783. The abstract may be filed and docketed in the office of the district clerk of the judicial district in which the judgment was rendered, and must be docketed in the judgment docket of the district court thereof. The time of the receipt of the abstract by the clerk must be noted by him thereon, and entered in the docket.

Effect of docket-
ing.

SEC. 784. From the time of the docketing in the district clerk's office, execution may be issued thereon by the district clerk to the United States marshal, or to the sheriff of any county in the Territory, where the same is to be served, in the same manner and with like effect as if issued on judgments of the district court.

Judgment not a
lien unless ab-
stract is dock-
eted.

SEC. 785. A judgment rendered in justices' court creates no lien upon any lands of the defendant, unless such an abstract is filed and docketed in the office of the clerk of the district court of the judicial district in which the lands are situated; when so filed and docketed, such a judgment is a lien upon the real property of the judgment debtor, not exempt from execution, situated in that judicial district, for the period of five years from the date of the judgment unless the judgment be previously satisfied.

CHAPTER VI.

Executions from Justices' Courts.

Execution may
issue at any time
within five years

SEC. 790. Execution for the enforcement of a judgment of a justice's court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution, con-
tents of.

SEC. 791. The execution when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county and precinct where, and the time when it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable, as are required in executions issued from the district court.

SEC. 792. An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof and subscribed by the justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Renewal of execution.

SEC. 793. The sheriff or constable to whom the execution is directed, must execute the same in the same manner as the sheriff is required to proceed upon executions directed to him, and the constable when the execution is directed to him, is vested for that purpose with all the power of the sheriff.

Duty of officer receiving execution.

SEC. 794. The provisions of this Code as to proceedings supplementary to execution in the district court, are applicable to justices' courts, the necessary changes and substitutions being made therein.

Certain provisions made applicable.

CHAPTER VII.

General Provisions Relating to Justices' Courts.

SEC. 800. A justice may punish, as for contempt, persons guilty of the following acts, and no other:

Contempts, may punish for.

1. Disorderly, contemptuous or insolent behavior toward the justice while holding court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding;

3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him;

4. Disobedience to a subpoena duly served, or refusing to be sworn, or to answer as a witness;

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

SEC. 801. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily; to that end an order must be made reciting the facts, as they occurred, and adjudging that the

Proceeding for contempts.

person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed.

Same.

SEC. 802. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him, or may convict him of the offense.

Punishments for contempts.

SEC. 803. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

The conviction must be entered in docket.

SEC. 804. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

Docket, what to contain.

SEC. 805. Every justice must keep a book, denominated a "docket," in which must be entered:

1. The title of every action or proceeding;
2. The object of the action or proceeding; and, if a sum of money be claimed, the amount thereof;
3. The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact;
4. The time when the parties, or either of them, appear, or their non-appearance, if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleadings;
5. Every adjournment, stating on whose application, and to what time;
6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury, and for the trial;
7. The names of the jurors who appear and are sworn, the names of all witnesses sworn, and at whose request;
8. The verdict of the jury and when received. If the jury disagree and are discharged, the fact of such disagreement and discharge;
9. The judgment of the court, specifying the costs included, and the time when rendered;
10. The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom;

11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

SEC. 806. The several particulars of the last section specified must be entered under the title of the action to which they relate, and, unless otherwise in this Code provided, at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice, or his successor in office, are primary evidence of the facts so stated.

Entries therein
primary evidence
of the fact.

SEC. 807. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

Alphabetical in-
dex to docket
must be kept.

SEC. 808. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors or any other which may be in his custody, to be kept as public records.

Dockets must be
delivered to suc-
cessor.

SEC. 809. If the office of a justice become vacant by his death, or removal from the precinct, or city, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the precinct or city, to be by him delivered to the successor of such justice. If there is no other justice in the precinct or city, then the docket and papers of such justice must be deposited in the office of the county clerk of the county, to be by him delivered to the successor in office of such justice.

Proceedings
when office be-
comes vacant,
and before suc-
cessor is ap-
pointed.

SEC. 810. Any justice with whom the docket of his predecessor or of another justice is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come, is for the purposes of this section, considered the successor of such former justice.

May issue exe-
cution or other
process upon the
docket of his
predecessor.

SEC. 811. The justice elected or appointed to fill a vacancy, is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take the office in the same precinct or city, from that time is the successor.

Successor of a
justice, who shall
be deemed.

If two justices be successors, probate judge to determine, etc.

SEC. 812. When two or more justices are equally entitled, under the last section, to be deemed the successors in office of the justice, the judge of the probate court for the county must, by a certificate subscribed by him and filed in the office of the county clerk, designate which justice is the successor of a justice going out of office, or whose office has become vacant.

Subpœnas and final process issued to any part of county.

SEC. 813. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

Blanks must be filled in all papers except subpœnas.

SEC. 814. The summons, execution, and every other paper made or issued by a justice, except a subpœna, must be issued without a blank to be filled by another, otherwise it is void.

Justice to receive all moneys collected, and pay same to parties.

SEC. 815. Justices of the peace must receive from the sheriff or constable of their county all moneys collected on any process or order issued from their courts respectively, and must pay the same, and all moneys paid to them in their official capacity, over to the parties entitled or authorized to receive them, without delay.

In case of disability of justice, another justice may attend on his own behalf.

SEC. 816. In case of the sickness, or other disability, or necessary absence of a justice on a return day of a summons, or at the time appointed for a trial, another justice of the same precinct or city, or an adjoining precinct of the county, may, at his request, attend in his behalf, and thereupon is vested with the power for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable may resume jurisdiction.

Security for costs

SEC. 817. Justices of the peace may, in all cases, require a deposit of money, or an undertaking, as security for costs of court, before issuing a summons.

Costs.

SEC. 818. The prevailing party in justices' courts is entitled to costs of the action, and also of any proceedings taken by him in aid of an execution, issued upon any judgment recovered therein.

Provisions of code applicable.

SEC. 819. Justices' courts being courts of peculiar and limited jurisdiction, only those provisions of this Code which are, in their nature, applicable to the organization, powers and course of proceedings in justices' courts, or which have been made applicable by special provisions in

this Code, are applicable to justices' courts and the proceedings therein.

SEC. 820. In all civil cases arising in justices' courts, wherein an undertaking is required as prescribed in this Code, the plaintiff or defendant may deposit with said justice a sum of money equal to the amount of the required undertaking, which may be received and held by the justice in place of said undertaking.

Deposit in lieu
of undertaking.

TITLE XII.

APPEALS IN CIVIL ACTIONS.

CHAPTER I.

Appeals in General.

SEC. 825. A judgment or order in a civil action, except when expressly made final, may be reviewed as prescribed in this Code and not otherwise.

Judgment and
orders may be
reviewed.

SEC. 826. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Orders made out
of court without
notice may be
reviewed by
judge.

SEC. 827. Any party aggrieved may appeal in the cases prescribed in this Code. The party appealing is known as the appellant, and the adverse party as the respondent.

Party aggrieved
may appeal.

Names of parties

SEC. 828. An appeal may be taken to the supreme court from the district court:

Within what
time appeal may
be taken.

1. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But

an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment;

2. From a judgment rendered on appeal from an inferior court, within ninety days after the entry of such judgment;

3. From an order granting or refusing a new trial, from an order granting or dissolving an injunction, from an order refusing to grant or dissolve an injunction, from an order dissolving or refusing to dissolve an attachment, from an order granting or refusing to grant a change of the place of trial, from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, and from an order confirming, changing, modifying, or setting aside the report in whole or in part of the referees in actions for the partition of real property, in the cases mentioned in the provisions of this Code relative to the partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court, or filed with the clerk.

Appeal, how
taken.

SEC. 829. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose unless within five days after service of the notice of appeal an undertaking be filed, or a deposit of money be made with the clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking or
deposit on ap-
peal.

SEC. 830. The undertaking on appeal must be in writing, and must be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal.

Undertaking on
appeal from a
money judgment

SEC. 831. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, to the effect that they are bound in double the amount named in the judgment or order; that if the

judgment or order appealed from, or any part thereof be affirmed, or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the supreme court in the court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties, for such amount, together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits they may state they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken, pursuant to the stipulations herein designated. When the judgment or order appealed from is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking must be made payable in the same kind of money or currency.

SEC. 832. If the judgment or order appealed from direct the assignment or delivery of documents, or personal property, the execution of the judgment or order cannot be stayed by appeal unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court or the judge thereof may appoint, or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

Appeal from a judgment for delivery of documents.

SEC. 833. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

Appeal from a judgment directing the execution of a conveyance, etc.

Undertaking on
appeal concern-
ing real property

SEC. 834. If the judgment or order appealed from, direct the sale or delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect, that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

Stay of proceed-
ings

SEC. 835. Whenever an appeal is perfected, as provided in the preceding sections of this Chapter, it stays all further proceedings in the court below, upon the judgment or order appealed from, or upon the matter embraced therein; and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from. And the court below may, in its discretion, dispense with or limit the security required by this Chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right. An appeal does not continue in force an attachment, unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him; that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained, and unless, within twenty days after the entry of the order appealed from, such appeal be perfected.

The security on
appeal may be
limited when
appellant is ex-
ecutor.

Undertaking
may be in one
instrument or
several.

SEC. 836. The undertakings prescribed by Sections 830, 831, 832 and 834 may be in one instrument or several, at the option of the appellant.

Justification of
s-curities on un-
dertaking on ap-
peal.

SEC. 837. The adverse party may except to the sufficiency of the sureties to the undertakings mentioned in Sections 830, 831, 832, and 834 at any time within thirty days after the filing of such undertakings; and, unless they or other sureties, within twenty days after the appel-

lant has been served with notice of such exception, justify before a judge of the court below, or clerk thereof, upon five days' notice to the respondent, of the time and place of justification, execution of the judgment order, or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this Chapter, a deposit in the court below of the amount of the judgment appealed from, and the three hundred dollars, in addition, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

SEC. 838. In cases not provided for in Sections 831, 832, 833 and 834, the perfecting of an appeal by giving the undertaking, or making the deposit mentioned in Section 830, stays proceedings in the court below, upon the judgment or order appealed from, except where it directs the sale of perishable property, in which case the court below may order the property to be sold and the proceeds thereof to be deposited to abide the judgment of the appellate court.* And except, also, where the order grants, or refuses to grant a change of the place of trial of an action.

Undertakings
in cases not
specified.

SEC. 839. On appeal from a final judgment the appellant must furnish the court with a copy of the notice of the appeal, of the judgment roll, and of any bill of exceptions or statement in the case, upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is made upon the minutes of the court, as provided in Section 538, or any bill of exceptions settled, as provided in Sections 525 or 526, is used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

What papers to
be used on an
appeal from the
judgment.

SEC. 840. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of the appeal, of the judgment or order appealed from, and of papers used on the hearing in the court below.

What papers
used on appeal
from judgment
rendered on ap-
peal.

SEC. 841. On an appeal from an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in Section 538 of this Code.

What papers
used on appeal
from order
granting or re-
fusing new trial.

SEC. 842. The copies provided for in the last three sections must be certified to be correct by the clerk or the

Copies and un-
dertakings, how
certified.

attorneys, and must be accompanied with a certificate of the clerk or attorneys, that an undertaking on appeal, in due form, has been properly filed, or a stipulation of the parties waiving an undertaking.

When an appeal may be dismissed. When not.

SEC. 843. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking thereon, if a good and sufficient undertaking, approved by a justice of the supreme court, be filed in the supreme court before the hearing upon motion to dismiss the appeal.

Effect of dismissal.

SEC. 844. The dismissal of an appeal is in effect an affirmation of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

What may be reviewed on an appeal from judgment.

SEC. 845. Upon an appeal from a judgment, the court may review the verdict or decision, or any intermediate order, if excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Remedial powers of appellate court.

SEC. 846. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as the restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment or had under process issued upon the judgment on the appeal from which the proceedings were not stayed; and for relief in such cases, the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the appellate court that the appeal was made for delay, it may add to the cost such damages as may be just.

On judgment on appeal, remittitur must be certified to.

SEC. 847. When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed must attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk must enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, by the supreme court on appeal.

CHAPTER II.

New Trials in, and Appeal from, Justice's Court to the District Court.

SEC. 852. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes: When new trial may be granted.

1. Accident or surprise, which ordinary prudence could not have guarded against;

2. Excessive damages, appearing to have been given under the influence of passion;

3. Insufficiency of the evidence to justify the verdict or other decision;

4. Newly discovered evidence material for the party making the application, which he could not with reasonable diligence have discovered and produced at the time.

SEC. 853. The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they are filed one day previous to the hearing of the motion. Application how made.

SEC. 854. Any party dissatisfied with a judgment rendered in a justice's court may appeal therefrom to the district court of the judicial district embracing the precinct or city where the judgment was rendered, at any time within thirty days after the rendition of judgment. The appeal shall be taken by filing a notice thereof with the justice, and serving a copy on the adverse party. Appeal within what time must be taken, and how.

SEC. 855. All causes appealed to the district court shall be heard anew in said court, and said court may regulate by rule the practice in such cases, in all respects not provided for by statute. Appealed cases to be heard anew.

SEC. 856. Upon receiving the notice of appeal, and on payment of the fees of the justice, for making the transcript and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the district court a certified copy of his docket, the pleadings, all notices, motions and other papers filed in the cause, the notice of appeal and undertaking filed; and the justice may be compelled by the district Upon the appeal must transmit the case.

court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the justice, by the party or his attorney. In the district court either party may have the benefit of all legal objections made in the justice's court.

Undertaking
must be filed.
Amount of.

SEC. 857. An appeal from a justice's court shall not be effectual for any purpose, unless an undertaking be filed, within five days after filing the notice of appeal, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal, or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property, and shall be to the effect, when the action is for the recovery of money, that the plaintiff will pay the amount of the judgment appealed from, and all costs if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in said action in the district court. When the action is for the recovery of specific personal property, the undertaking shall be to the effect that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or will pay the amount of any judgment and costs which may be recovered against him in said action in the district court, and will obey any order by the court therein. The undertaking shall be accompanied by the affidavits of the sureties, that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution. The adverse party may, however, except to the sufficiency of the sureties, within two days after the filing of the undertaking, and unless they or other sureties justify before the justice from whose court the appeal is taken, within two days thereafter, upon notice to the adverse party, the appeal shall be regarded as if no undertaking had been given. A deposit of the amount of the judgment appealed from, including all costs, or the value of the property and all costs, in actions for the recovery of specific personal property, with the justice, shall be equivalent to the filing of the undertaking in this section mentioned; and in such cases the justice shall transmit the money to the clerk of

the district court, to be by him paid out on the order of the court.

SEC. 858. If an execution be issued, on the filing of the undertaking, staying all proceedings, the justice shall, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof, as may be necessary to pay the same.

Filing the undertaking stays all proceedings.

TITLE XIV.

OF MISCELLANEOUS PROVISIONS.

CHAPTER I.

SEC. 863. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in Section 272, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Parties not summoned in actions on joint contract may be summoned after judgment.

SEC. 864. The summons, as provided in the last section, must describe the judgment and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time as the original summons. It is not necessary to file a new complaint.

Summons in that case what to contain and how served.

Affidavit to accompany summons.

SEC. 865. The summons may be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Answer, when filed and what it may contain.

SEC. 866. Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

What constitutes the pleadings in the case.

SEC. 867. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations.

Issues, how tried

SEC. 868. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

Offer of Defendant to Compromise.

Proceedings on offer of defendant to compromise after suit brought.

SEC. 872. The defendant in any action may at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.

CHAPTER III.

Inspection of Writings.

SEC. 877. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other within a specified time, a copy, or permission to take a copy, of entries of accounts in any book, or of any document or paper in his possession, or under his control, containing business accounts or transactions of a pecuniary character relating to the merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the entries of accounts, of the book, or the document or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the court may also punish the party refusing for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

A party may demand inspection and copy of a book, paper, etc.

CHAPTER IV.

Motions and Orders.

SEC. 882. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Order and motion defined.

SEC. 883. Motions must be made in the court in which the action is pending. Orders made out of court may be made by the judge of the court in any part of the Territory.

Court motions and orders, when made.

SEC. 884. When a written notice of a motion is required by this Code, or by a rule of the supreme or district court, it must be given, if the court be held in the same county, with both parties, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five

Notice of motion at what time to be given.

miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but in all cases the court, or a judge thereof, may prescribe a shorter time.

Transfer of motion and orders to show cause.

SEC. 885. When a notice of motion is given, or an order to show cause is made returnable, before a judge out of court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter shall stand continued until the further order of the court or judge, or it may be transferred by his order to some other judge.

Order for payment of money, how enforced. When and how served.

SEC. 886. Whenever an order for the payment of a sum of money is made by a court, or judge thereof, pursuant to the provisions of this Code, it may be enforced by execution in the same manner as if it were a judgment.

CHAPTER V.

Notices and Filing and Service of Papers.

Notices must be in writing.

SEC. 891. Notices must be in writing, and notices and other papers may be served upon the party or attorney in the manner prescribed in this Chapter, when not otherwise provided by this Code.

When and how served.

SEC. 892. The service may be personal, by delivering to the party or attorney on whom the service is required to be made, or it may be as follows:

1. If upon an attorney it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, inclosed in an envelope, into the post office directed to such attorney;

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence

be not known, by putting the same, inclosed in an envelope, into the post office directed to such party.

SEC. 893. Service by mail may be made where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail. Service by mail, when.

SEC. 894. In case of service by mail the notice or other paper must be deposited in the post office, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done is extended one day for every twenty-five miles distance between the place of deposit and the place of address; such extension, however, not to exceed thirty days in all. Service by mail, how.

Appearance.

SEC. 895. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail. Notices after appearance.

SEC. 896. When a plaintiff or a defendant, who has appeared, resides out of the Territory, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers when required, must be upon the attorney instead of the party, except of subpoenas, of writs, and other process issued in the suit, and of papers to bring him into contempt. Services on non-residents.

Where a party has attorney, service shall be on attorney.

SEC. 897. The foregoing provisions of this Chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt. Preceding provisions not to apply to, etc.

SEC. 898. Any summons, writ, or order, in any civil suit or proceeding, and all other papers requiring service may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order, or paper so transmitted may be served or executed by the officers or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and Service by telegraph

with the same force and effect, in all respects, as the original thereof might be delivered to him, and the officer or person serving or executing the same has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ, or order, must also be filed in the court from which it was issued and a certified copy thereof must be preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L S" or by the word "seal."

CHAPTER VI.

Of Costs.

Compensation of
attorneys.
Costs to parties.

SEC. 903. The measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to action or proceedings are entitled to costs and disbursements, as hereinafter provided.

When allowed
of course to
plaintiff.

SEC. 904. Costs are allowed of course to the plaintiff, upon a judgment in his favor in the following cases:

1. In an action for the recovery of real property;
2. In an action to recover the possession of personal property where the value of the property amounts to one hundred dollars or over, such value shall be determined by the jury, court or referee by whom the action is tried;
3. In an action for the recovery of money or damages, when plaintiff recovers one hundred dollars or over;
4. In a special proceeding;
5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine.

Several actions
brought on a
single cause of
action can carry
costs in but one.

SEC. 905. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs

can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this Territory. But the disbursements of the plaintiff must be allowed to him in each action.

SEC. 906. Costs must be allowed of course to the defendant upon a judgment in his favor in the action mentioned in Section 904 and in special proceedings.

When defendant's costs must be allowed.

SEC. 907. In other actions than those mentioned in Section 904, costs may be allowed or not, and, if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

Costs, when in the discretion of the court.

SEC. 908. When there are several defendants in the actions mentioned in Section 904 not united in interest, and making separate defenses, by separate answers, and the plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor.

When the several defendants are not united in interest, costs may be severed.

SEC. 909. In all cases tried in the district court, on appeal, costs must be awarded to the prevailing party.

Prevailing party entitled to costs in appeal cases.

SEC. 910. The fees of referees are five dollars to each, for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon, such rate shall be allowed.

Referees' fees.

SEC. 911. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement, may be imposed in the discretion of the court or referee, as a condition of granting the same.

Continuance, costs may be imposed as condition of.

SEC. 912. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for the plaintiff, the amount so tendered, and the allegation be found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs, when tender is made before suit brought.

SEC. 913. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be re-

Costs in an action by or against an administrator, etc.

covered as in actions by, and against, a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

Costs in special proceedings to be allowed as in cases on appeal.

SEC. 914. When the decision of a court of inferior jurisdiction, in a special proceeding, is brought before a court of higher jurisdiction, for a review, in any other way than by appeal, the same costs must be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Filing and service and affidavit of bill of costs.

SEC. 915. The party in whose favor judgment is rendered, and who claims his costs, must deliver to the clerk, and serve a copy upon the adverse party, within five days after the verdict or notice of the decision of the court or referee, or, if the entry of the judgment on the verdict or decision be stayed, then before such entry is made a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief, the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within five days after notice of filing of bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof at chambers.

Costs on appeal, how claimed and recovered.

SEC. 916. Whenever costs are awarded to a party by an appellate court, if he claims such costs, he must, within thirty days after the remittitur is filed with the clerk below, deliver to such clerk a memorandum of his costs verified as prescribed by the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Interest and costs must be included by the clerk in the judgment.

SEC. 917. The clerk must include in the judgment entered up by him, any interest on the verdict or decision of the court from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank, left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

SEC. 918. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court, or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

Security for costs.

SEC. 919. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking, as required, has been filed, the court, or judge, may order the action to be dismissed.

If such security is not given the action may be dismissed.

SEC. 920. When the Territory is a party, and costs are awarded against it, they must be paid out of the Territorial treasury, and the auditor shall draw his warrant therefor on the general fund.

Costs, when Territory is a party.

SEC. 921. When a county is a party, and costs are awarded against it, they must be paid out of the county treasury.

Costs, when county is a party.

CHAPTER VII.

General Provisions.

SEC. 926. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

Lost papers, how supplied.

SEC. 927. An affidavit, notice, or other paper, without the title of the action or proceeding in which it was made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Papers without the title of the action, or with defective title, may be valid.

SEC. 928. Successive actions may be maintained upon the same contract or transaction whenever after the former action, a new cause of action arises therefrom.

Successive actions on the same contract, etc.

Consolidation of several actions into one.

SEC. 929. Whenever two or more actions are pending at one time between the same parties, and in the same court upon causes of action which might have been joined, the court may order the actions to be consolidated.

Actions, when deemed pending.

SEC. 930. An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Actions to determine adverse claims, and by sureties.

SEC. 931. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as a surety.

Testimony, when to be taken by the clerk.

SEC. 932. On the trial of an action in a court of record, if there is no short-hand reporter of the court in attendance, the court may require the clerk to take down the testimony in writing.

The clerk must keep a register of actions.

SEC. 933. The clerk must keep among the records of the court, a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

Two or three referees, etc., may do any act.

SEC. 934. When there are three referees, or three arbitrators, all must meet, but two of them may do any act which might be done by all.

Time within which an act under this Code to be done, may be extended.

SEC. 935. When an act to be done as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or bills of exception or of amendments thereto, or to the service of notices, other than of appeal, the time allowed by this Code may be extended, upon good cause shown, by the court in which the action is pending, or a judge thereof.

Actions against a sheriff for official acts.

SEC. 936. If an action is brought against a sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Undertakings mentioned in this Code, requisites of.

SEC. 937. In all cases where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and

householders or freeholders within the Territory, and are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 938. In any civil action or proceeding wherein the Territory or the people of the Territory is a party plaintiff, or any Territorial officer, in his official capacity, or on behalf of the Territory, or any county, or city, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, or city, but on complying with the other provisions of this Code, the Territory or the people thereof, or any Territorial officer acting in his official capacity, or any county or city, have the same rights, remedies, and benefits, as if the bond, undertaking, or security were given and approved as required by this Code.

People not
required to give
bonds.

SEC. 939. Whenever any surety on an undertaking on appeal executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce and satisfy such judgment in all respects as if he had recovered the same.

Surety on
appeal bond
when substituted
to rights of
judgment
creditors.

PART III.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

Preliminary Provisions.

Parties, how
designated.

SEC. 944. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Judgment and
order same
meaning as in
civil actions.

SEC. 945. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

TITLE I.

OF WRITS OF REVIEW, MANDATE AND PROHIBITION.

CHAPTER I.

Writ of Review.

Certiorari
defined.

SEC. 950. The writ of certiorari may be denominated the writ of review.

When and by
what courts
granted.

SEC. 951. A writ of review may be granted by any court, except a probate or justice's court, when an inferior tribunal, board or officer exercising judicial functions has exceeded the jurisdiction of such tribunal, board or officer,

and there is no appeal, nor in the judgment of the court, any plain, speedy, and adequate remedy.

SEC. 952. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Application for,
how made.

SEC. 953. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

The writ to be
directed to the
inferior tribunal,
etc.

SEC. 954. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript, of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Contents of
writ.

SEC. 955. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

Proceedings in
inferior court
may be stayed
or not.

SEC. 956. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Service of the
writ.

SEC. 957. The review upon this writ can not be extended, further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

The review
under the writ,
extent of.

SEC. 958. If the return to the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming or annulling or modifying the proceedings below.

A defective re-
turn of the writ
may be per-
fected.

SEC. 959. A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Copy of judg-
ment must be
sent to inferior
tribunal.

SEC. 960. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll.

Judgment rolls.

CHAPTER II.

Writ of Mandate.

Mandamus
defined.

SEC. 964. The writ of mandamus may be denominated a writ of mandate.

When and by
what courts
granted.

SEC. 965. It may be issued by any court in this Territory, except a justice's or probate court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and the right to which is not in dispute, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Writ, when and
upon what to
issue.

SEC. 966. This writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Writ must be
either alternative
or peremptory.

SEC. 967. The writ may either be alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not done as commanded, must be omitted, and a return day inserted.

If the applica-
tion be without
notice the alter-
native writ
may issue;
otherwise the
peremptory.

SEC. 968. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application when given must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not.

Notice and
default.

SEC. 969. On the return day of the alternative, or the day on which the application for the writ is noticed, (or such further day as the court may allow,) the party on whom the writ or notice has been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

The adverse party may answer under oath

SEC. 970. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and if the proceedings are pending in the supreme court, the verdict certified to that court. The order for trial may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him; if the order for trial is issued from the supreme court it must designate the judicial district in which the same shall be had.

If an essential question of fact is raised, the court may order a jury trial.

SEC. 971. On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

The applicant may demur to the answer or countervail it by proof.

SEC. 972. The motion for a new trial must be made in the court in which the issue of fact is tried.

Motion for new trial, when made

SEC. 973. If no notice of a motion for a new trial be given or, if given, the motion be denied, if the application for the writ is pending in the supreme court the clerk of the district court must within five days transmit to the supreme court a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application in the court in which it is pending upon reasonable notice to the adverse party.

The clerk must transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion.

SEC. 974. If no answer be made the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

If no answer be made, or if it raise immaterial issues, proceedings.

SEC. 975. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs, an execution may

If the applicant succeed, he may have damages, costs, and a peremptory mandate.

issue, and a peremptory mandate must also be awarded without delay.

Service of the writ.

SEC. 976. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

Penalty for disobedience of writ.

SEC. 977. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding five hundred dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

CHAPTER III.

Writ of Prohibition.

Prohibition defined.

SEC. 982. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

When and where issued.

SEC. 983. It may be issued by any court except probate or justices' courts to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

Writ may be alternative or peremptory.

SEC. 984. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from

any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted, and a return day inserted.

SEC. 985. The provisions of the preceding sections from 968 to 977 both inclusive, apply to the proceedings for writ of prohibition. Certain preceding sections apply.

SEC. 986. Writs of review, mandate, and prohibition, may be issued by any of the justices of the supreme court, or, by a district judge in vacation, and may, in the discretion of the justice or judge issuing the writ, be made returnable and a hearing thereon be had in vacation. Writs of review, mandate and prohibition may issue and be heard at chambers.

SEC. 987. Except as otherwise provided in this Title, the provisions of this Code relative to civil actions in the district court, are applicable to and constitute the rules of practice in the proceedings mentioned in this Title. Certain provisions applicable.

SEC. 988. The provisions of this Code relative to new trials in, and appeals from the district court, except so far as they are inconsistent with the provisions of this Title, apply to the proceedings mentioned in this Title. Same.

TITLE II.

OF CONTESTING CERTAIN ELECTIONS.

SEC. 993. Any elector of a county, precinct, or city, may contest the right of any person declared elected to an office to be exercised therein, for any of the following grounds: Who may contest and grounds of contest.

1. For malconduct on the part of the board of judges, or any member thereof;

2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office.

3. When the person whose right is contested has given to any elector, or inspector, judge, or clerk of the election, any bribe, or reward, or has offered any such bribe

or reward, for the purpose of procuring his election, or has committed any other offense against the elective franchise defined by law;

4. On account of illegal votes.

Irregularity and improper conduct of judges, when to annul elections.

SEC. 994. No irregularity or improper conduct in the proceedings of the judges, or any of them, is such malconduct as avoids an election, unless the irregularity or improper conduct is such as to procure the person whose right to the office is contested to be declared elected when he had not received the highest number of legal votes.

When not to.

SEC. 995. When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the board of judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts, would change the result as to such office in the remaining vote of the county.

Illegal votes, when not to vitiate election.

SEC. 996. Nothing in the fourth ground of contest is to be so construed as to authorize an election to be set aside on account of illegal votes, unless it appear that a number of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Proceedings on contest.

SEC. 997. When an elector contests the right of any person declared elected to such office, he must, within forty days after the return day of the election, file with the clerk of the district court, of the judicial district within which such office is to be exercised, a written statement, setting forth specifically:

1. The name of the party contesting such election, and that he is an elector of the district, county, or precinct, as the case may be, in which such election was held;

2. The name of the person whose right to the office is contested;

3. The office;

4. The particular grounds of such contest, which statement must be verified by the affidavit of the contesting party, that the matters and things therein contained are true.

Statement of cause of contest.

SEC. 998. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally, that in one or more specified precincts illegal votes were

given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

When based on reception of illegal votes, contestant to deliver list of such to respondent.

SEC. 999. No statement of the grounds of contest will be rejected, nor the proceedings dismissed by any court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which such election is contested.

Statement of cause of contest; want of form not to vitiate.

SEC. 1000. Upon the statement being filed, the clerk must inform the judge of the district court thereof; the judge of said court must then by an order to be entered by the clerk, name some day, not less than ten nor more than twenty days from the date of such order, to hear and determine such contested election.

When contest to be heard.

SEC. 1001. The clerk must thereupon issue a citation for the person, whose right to the office is contested, to appear at the time and place specified in the order, which citation must be delivered to the United States marshal or sheriff, and be served either upon the party in person, or, if he cannot be found, by leaving a copy thereof at the house where he last resided, at least five days before the time so specified.

Clerk to issue citation to respondent.

SEC. 1002. The clerk must issue subpoenas for witnesses at the request of either party, which must be served as other subpoenas; and the judge shall have full power to issue attachments to compel the attendance of witnesses who have been subpoenaed to attend.

Witnesses, attendance of, how enforced.

SEC. 1003. The court must meet at the time and place designated, to determine such contested election, and shall have all the powers necessary to the determination thereof. It may adjourn the hearing and trial from day to day until such trial is ended, and may also continue the trial, before its commencement, for any time not exceeding twenty days, for good cause shown by either party upon affidavit, at the costs of the party applying for such continuance.

Power of court.

Adjournment of court.

SEC. 1004. The court must be governed, in the trial and determination of such contested election, by the rules

Rules to govern court in trial of contest.

of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of the contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court must pronounce judgment in the premises, either confirming or annulling and setting aside such election.

Court may declare who was elected.

SEC. 1005. If in any such case it appears that another person than the one returned has the highest number of legal votes, the court must declare such person elected.

Fees of officers and witnesses.

SEC. 1006. The clerk, marshal, or sheriff, and witnesses shall receive respectively, the same fees, from the party against whom judgment is given, as are allowed for similar services in other cases.

Costs.

SEC. 1007. If the proceedings are dismissed for insufficiency, or want of prosecution, or the election is by the court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested, in favor of the party contesting the same. *Primarily*, each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner as similar costs are collected in other cases.

Appeal.

SEC. 1008. Either party, aggrieved by the judgment, may appeal therefrom to the supreme court, as in other cases of appeal thereto from the district court.

When election void and office vacant.

SEC. 1009. Whenever an election is annulled or set aside by the judgment of the district court, and no appeal has been taken within ten days thereafter, the commission, if any has been issued, is void, and the office vacant.

TITLE III.

SUMMARY PROCEEDINGS.

CHAPTER I.

Confession of Judgment without Action.

SEC. 1014. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this Chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Judgment may be confessed for debt due or contingent liability.

SEC. 1015. A statement in writing must be made, signed by the defendant and verified by his oath to the following effect:

Statement in writing and form thereof.

1. It must authorize the entry of judgment for a specified sum;

2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due;

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

SEC. 1016. The statement must be filed with the clerk of the court in which the judgment is to be entered, who must indorse upon it, and enter in the judgment book, a judgment of such court for the amount confessed, with five dollars costs. The statement and affidavit, with the judgment indorsed, thereupon becomes the judgment roll.

Filing statement and entering judgment.

SEC. 1017. In a justice's court, where the court has the authority to enter the judgment, the statement may be filed with the justice, who must thereupon enter in his docket a judgment of his court for the amount confessed, with three dollars costs. If a transcript of such judgment be filed with the district clerk, a copy of the statement must be filed with it.

How, in justice's court.

CHAPTER II.

Submitting a Controversy without Action.

Controversy,
how submitted
without action.

SEC. 1018. Parties to a question in difference, which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court must thereupon hear and determine the case, and render judgment thereon as if an action were depending.

Judgment on, as
in other cases,
but without costs
prior to notice of
trial.

SEC. 1019. Judgment must be entered in the judgment book, as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment constitutes the judgment roll.

Judgment may
be enforced or
appealed from as
in an action.

SEC. 1020. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

CHAPTER III.

Discharge of Prisoners on Civil Process.

Persons confined
may be dis-
charged.

SEC. 1021. Any person confined in jail on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this Chapter specified.

Notice of appli-
cation.

SEC. 1022. Such person must cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place, he will apply to the district judge of the district in which the county in which he may be imprisoned is situated, for the purpose of obtaining a discharge from his imprisonment.

Service of no-
tice.

SEC. 1023. Such notice must be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application.

SEC. 1024. At the time and place specified in the notice, such person must be taken before such judge, who must examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, and such judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Examination before judge.

SEC. 1025. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

Interrogatories may be in writing.

SEC. 1026. If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to-wit: "I—do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay or defraud my creditors, so help me God."

Oath to be administered.

SEC. 1027. After administering the oath, the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

Order of discharge.

SEC. 1028. If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings must thereupon be had.

If not discharged prisoner may again apply, when.

SEC. 1029. The prisoner, after being so discharged, is forever exempt from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the judge, or in taking the oath before prescribed.

Discharge final.

SEC. 1030. The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

Judgment remains in force.

SEC. 1031. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

Plaintiff may order discharge of prisoner, etc.

Plaintiff to advance funds for support of prisoner.

SEC. 1032. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney, must advance to the jailor, on such commitment, sufficient money for the support of the prisoner for one week, and must make the like advance for every successive week of his imprisonment, and in case of a failure to do so, the jailor must forthwith discharge such prisoner from custody; and such discharge has the same effect as if made by order of the creditor.

CHAPTER IV.

Summary Proceedings for Obtaining Possession of Real Property in Certain Cases.

Forcible entry defined.

SEC. 1033. Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or
2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

Forcible detainer defined.

SEC. 1034. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or
2. Who, in the night time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Unlawful detainer defined.

SEC. 1035. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. Where he continues in possession, in person or by sub-tenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without

permission of his landlord, or his successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice of five days;

2. When he continues in possession, in person or by sub-tenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year;

3. When he continues in possession, in person or by sub-tenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Within three days after the service of the notice, the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; *Provided*, If the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease. A tenant

may take proceedings, similar to those prescribed in this Chapter, to obtain possession of the premises let to an under-tenant, in case of his unlawful detention of the premises underlet to him;

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises, under the provisions of this Chapter.

Service of
notice.

SEC. 1036. The notices required by the preceding section may be served, either:

1. By delivering a copy to the tenant personally; or,

2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant, at his place of residence; or,

3. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Courts, have
jurisdiction.

SEC. 1037. The district court of the judicial district which embraces the property, or some part of it, has jurisdiction of proceedings under this Chapter; *Provided*, That justices' courts, within their respective precincts, or cities, shall have concurrent jurisdiction with the district court in cases of forcible entry and detainer, under this Chapter, when the whole amount of rent and damages claimed is less than three hundred dollars.

Parties defend-
ant.

SEC. 1038. No person other than the tenant of the premises, and sub-tenant, if there be one in the actual occupation of the premises, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the non-joinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. In case a married woman be a tenant or a sub-tenant, her coverture shall con-

stitute no defense, but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.

SEC. 1039. Except as provided in the preceding section, the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding. Parties generally.

SEC. 1040. The plaintiff, in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a day designated therein, which shall not be less than three days nor more than twelve days from its date, except in cases when the publication of the summons is necessary, in which case the court, or a judge or justice thereof, may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. The complaint.

Summons to issue.

SEC. 1041. The summons must state the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought and also the return day, and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and be served at least two days before the return day designated therein, and must be served and returned in the same manner as summons in civil actions is served and returned. Upon the return of any summons issued under this Chapter, where the same has not, for any reason, been served, or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued. What summons must state.

When new summons may issue.

SEC. 1042. If the complaint presented establishes, to the satisfaction of the judge or justice, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant. Arrest.

SEC. 1043. If, at the time appointed, the defendant do not appear and defend, the court must enter his default Judgment by default.

and render judgment in favor of the plaintiff as prayed for in the complaint.

Defendant may appear, etc.

SEC. 1044. On or before the day fixed for his appearance the defendant may appear and answer or demur.

Trial by jury.

SEC. 1045. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

Showing required of plaintiff, forcible entry or detainer.

SEC. 1046. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense, that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

Of defendant.

Complaint must be amended in certain cases.

SEC. 1047. When, upon the trial of any proceeding under this Chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court, good cause therefor.

Verdict and judgment.

SEC. 1048. If, upon the trial, the verdict of the jury, or if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises, and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial, and find the amount of any rent due, if the

alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable, has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied, and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

SEC. 1049. The complaint and answer must be verified.

Verification of complaint and answer.

SEC. 1050. An appeal taken by the defendant shall not stay proceedings upon the judgment, unless the judge or justice before whom the same was rendered so directs.

Effect of an appeal upon the judgment.

SEC. 1051. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this Chapter apply to the proceedings mentioned in this Chapter.

Provisions applicable to proceedings under this Chapter.

TITLE IV.

CHAPTER I.

Enforcement of Liens.

DEFINITION OF LIENS.

Lien defined.

SEC. 1056. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

LIENS OF MECHANICS AND OTHERS UPON REAL PROPERTY.

What laborers, contractors, etc., may have liens upon.

SEC. 1057. Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

Notice by sub-contractor, etc., and lien for an amount due contractor.

SEC. 1058. Any sub-contractor, material man, laborer, or other person performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last section, may, at any time within five days after commencing to perform the labor or furnish the materials serve upon the owner or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person may have a

lien for such amount. And any person furnishing materials, or performing labor for a contractor, may, by like notice to the contractor, be subrogated to the rights of such sub-contractor.

SEC. 1059. Any person, who at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of, or adjoining the same, has a lien upon such lot for his work done and materials furnished.

Liens for grading, filling lots and streets.

SEC. 1060. The land upon which any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time the work was commenced or the materials for the same had commenced to be furnished, the land belonged to the person who caused said building, improvement or structure to be constructed, altered or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

What interest in the land subject to the lien.

SEC. 1061. The liens provided for in this Chapter are preferred to any lien, mortgage or other incumbrance, which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished; also, to any lien, mortgage, or other incumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.

Effect of liens.

SEC. 1062. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this Chapter, must within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the county recorder of the county in which such property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which

Claim of lien to be filed in recorder's office.

claim must be verified by the oath of himself or some other person.

Liens upon two or more pieces of property.

Amount due from each to be designated.

Claim to be recorded.

Fees of recorder

Time of continuance of lien.

Sub-contractors, where and when paid out of proceeds of sale.

Measure of recovery by contractor, protection of owner's rights.

SEC. 1063. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

SEC. 1064. The recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

SEC. 1065. No lien provided for in this Chapter binds any building, mining claim, improvement or structure for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same, or, if a credit be given, then ninety days after the expiration of such credit, but no lien continues in force for a longer time than two years from the time work is completed, by any agreement to give credit.

SEC. 1066. All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are sub-contractors, and the court in the judgment must direct the amount due sub-contractors to be paid out of the proceeds of sales, before any part of such proceeds are paid to the contractor.

SEC. 1067. The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this Chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to

deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs.

SEC. 1068. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz: First—All persons other than the original contractors and sub-contractors; Second—The sub-contractors; Third—The original contractors. And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

Court to declare rank of liens.

SEC. 1069. Any number of persons claiming liens may join or intervene in the same actions, and when separate actions are commenced, the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the lien.

Separate actions may be consolidated.

Costs.

SEC. 1070. Nothing contained in this Chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

Lien not to impair right to personal action.

SEC. 1071. Except as otherwise provided in this Chapter, the provisions of this Code relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in the proceedings mentioned in this Chapter.

Provisions applicable to proceedings under this Chapter.

TITLE V.

OF CONTEMPT.

SEC. 1076. The following acts or omissions, in respect to a court of justice or proceedings therein, are contempts of authority of the court:

What acts or omissions are contempt.

1. Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. Breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, marshal, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

4. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

5. Disobedience of any lawful judgment, order or process of the court;

6. Assuming to be an officer, attorney, counsel of a court and acting as such without authority;

7. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

9. Any other unlawful interference with the process or proceedings of a court;

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

12. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Re-entry on
property after
eviction, when a
contempt.

SEC. 1077. Every person dispossessed or ejected from or out of any real property, by the judgment or process of any court of competent jurisdiction, and who, not having a right so to do, re-enters into or upon, or takes possession of any such real property, or induces or procures any person not having a right so to do, or aids or

abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt, the court or justice of the peace must immediately issue an alias process directed to the proper officer and requiring him to restore the party entitled to the possession of such property under the original judgment or process to such possession.

SEC. 1078. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as in Section 1085 of this Code prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court, or judge, of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer.

A contempt committed in the presence of the court may be punished summarily.

When not so committed affidavit or statement shall be made.

SEC. 1079. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

A warrant of attachment may issue, or a notice to show cause.

SEC. 1080. Whenever a warrant of attachment is issued pursuant to this Chapter, the court, or judge, must direct by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Bail may be given by a person arrested under such warrant.

SEC. 1081. Upon executing the warrant of attachment, the officer must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Officer must upon executing the warrant arrest and detain the person until discharged.

SEC. 1082. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant,

Bail bond, form and conditions of

and abide the order of the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

Officer must re-
turn warrant and
undertaking, if
any.

SEC. 1083. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Hearing.

SEC. 1084. When the person arrested has been brought up, or has appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him; for which an adjournment may be had from time to time, if necessary.

Judgment and
penalty if guilty.

SEC. 1085. Upon the answer and evidence taken, the court, or judge, must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding two hundred dollars, or he may be imprisoned not exceeding five days, or both.

If the contempt
is omission to
perform any act,
the person may
be imprisoned
until perform-
ance.

SEC. 1086. When the contempt consists in the omission to perform an act enjoined by law, which is yet in the power of the person to perform, he may be imprisoned until he have performed it, or until released by the court, and, in that case, the act must be specified in the warrant of commitment.

If a party fail
to appear, pro-
ceedings.

SEC. 1087. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court, or judge, may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Illness sufficient
cause for non-
appearance of
party arrested.

SEC. 1088. Whenever, by the provisions of this Chapter, an officer is required to keep a person arrested, on a warrant of attachment, in custody, and to bring him before a court, or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

TITLE VI.

VOLUNTARY DISSOLUTION OF CORPORATIONS.

SEC. 1094. A corporation may be dissolved by the district court of the district where its office or principal place of business is situated, upon its voluntary application for that purpose. How dissolved.

SEC. 1095. The application must be in writing, and must set forth: Application, what to contain.

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members;

2. That all the claims and demands against the corporation have been satisfied and discharged.

SEC. 1096. The application must be signed by a majority of the board of trustees, directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action. Application, how signed and verified.

SEC. 1097. If the judge is satisfied that the application is in conformity with this Chapter he must order it to be filed with the clerk, and that the clerk give not less than thirty days' notice of the application, by publication in some newspaper published in the district, and if there are none such, then by advertisements, posted up in three of the principal public places in the county where its office or principal place of business is situated. Filing application and publication of notice.

SEC. 1098. At any time before the expiration of the time of publication, any person may file his objections to the application. Objections may be filed.

SEC. 1099. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, he must declare the corporation dissolved. Hearing of application.

SEC. 1100. The application, notices, and proof of publication, objections, if any, and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken as from judgments in other civil actions. Judgment rolls and appeals.

TITLE VII.

OF EMINENT DOMAIN.

Eminent domain
may be exer-
cised.

SEC. 1105. Subject to the provisions of this Chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1 Public buildings and grounds for the use of the Territory, and all other public uses authorized by the Legislature;

2. Public buildings and grounds for the use of any county, incorporated city, village, town or school district, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village or town; or for draining any county, incorporated city, village or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels; roads, streets and alleys, and all other public uses for the benefit of any county, incorporated city, village, or town, or the inhabitants thereof;

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, by-roads, plank and turnpike roads, steam and horse railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable;

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines;

5. By-roads leading from highways to residences and farms;

6. Telegraph lines;

7. Sewerage of any incorporated city.

SEC. 1106. The following is a classification of the estates and rights in lands subject to be taken for public use:

Estates and rights subject to condemnation.

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine;

2. An easement, when taken for any other use;

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

SEC. 1107. The private property which may be taken under this Chapter includes:

Private property defined.

1. All real property belonging to any person;

2. Lands belonging to this Territory, or to any county, incorporated city, village or town, not appropriated to some public use;

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated;

4. Franchises for toll-roads, toll bridges and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;

5. All rights of way for any and all purposes mentioned in Section 1105, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use in common with the owner thereof, when necessary; but such uses of crossings, intersections and connections, shall be made in manner most compatible with the greatest public benefit and least private injury;

6. All classes of private property not enumerated, may be taken for public use, when such taking is authorized by law.

SEC. 1108. Before property can be taken it must appear:

Facts necessary to be found by court before condemnation.

1. That the use to which it is to be applied is a use authorized by law:

2. That the taking is necessary to such use;

3. If already appropriated to some public use, that

the public use to which it is to be applied is a more necessary public use.

Parties may
make location.

SEC. 1109. In all cases where land is required for public use, the Territory or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this Chapter. The territory or its agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the lands, except for injuries resulting from negligence, wantonness, or malice.

May enter to
make surveys.

Jurisdiction in
district courts.

SEC. 1110. All proceedings under this Chapter must be brought in the district court for the district in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

The complaint
and its contents.

SEC. 1111. The complaint must contain;

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants;

3. A statement of the right of the plaintiff;

4. If a right of way be sought, the complaint must show the location, general route and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only part of an entire parcel or tract. All parcels lying in the same judicial district and required for the same public use, may be included in the same or separate proceedings at the option of the plaintiff, but the court may consolidate or separate them, to suit the convenience of parties.

Summons, what
to contain.

SEC. 1112. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner.

How issued and
served.

SEC. 1113. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

Who may defend.

What the answer may show.

SEC. 1114. The court or judge thereof shall have power:

Court shall have jurisdiction to regulate the mode of making crossings, or of enjoying a common use.

1. To determine the conditions specified in section 1108 and regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 1107;

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor;

3. To determine the respective rights of different parties seeking condemnation of the same property.

SEC. 1115. The court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

Court or jury to assess damages.

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitutes only a part of a large parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately how much the portion not sought to be condemned, and each estate or interest therein, will be benefitted, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under Subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be for a railroad the cost of good and sufficient fences along the

line of such railroad between such railroad, and other adjoining lands of the defendant;

5. As far as practicable, compensation must be assessed for each source of damages separately.

The date with respect to which compensation shall be assessed and the measure thereof.

SEC. 1116. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in the last section. No improvements put upon the property subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

New proceedings to cure defective title.

SEC. 1117. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this Chapter prescribed.

Payment of damages, or deposit of bond therefor.

SEC. 1118. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed in respect to the land taken and also execute to the defendant a bond, with sureties to be approved by the court, or judge thereof, in double the assessed cost of constructing good and sufficient fences as provided in Subdivision 4, of Section 1115, conditioned that the plaintiff shall build such fence within twelve months from the time the railroad is built on or over the land taken, and the defendant or his grantees, in case of a breach of the conditions of said bond, may have an action thereon, and recover all damages sustained and the cost of constructing such fences, and when collected such damages and costs shall be paid into court, and that portion consisting of the estimated cost of fencing must be applied to that purpose under the direction of the court.

Damages, to whom paid.

SEC. 1119. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant if possession has been taken by the plaintiff.

SEC. 1120. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purpose of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described therein shall vest in the plaintiff for the purpose therein specified.

Final order of condemnation, what to contain.

When filed, title vests.

SEC. 1121. At any time after trial and judgment entered, or pending an appeal from the judgment to the supreme court, whenever the plaintiff shall have paid into court for the defendant, the full amount of the judgment, and such further sum as may be required by the court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant if for any cause the property shall not be finally taken for public use, the district court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court, or a judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant, as aforesaid, shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation.

Putting plaintiff in possession.

SEC. 1122. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court.

Costs may be allowed; distribution thereof.

SEC. 1123. Except as otherwise provided in this Chapter, the provisions of this Code relative to civil actions and new trials and appeal, are applicable to and constitute the rules of practice in the proceedings in this Chapter.

Proceedings applicable to proceedings under this Chapter.

Exceptions.

SEC. 1124. Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

TITLE VIII.

OF CHANGE OF NAMES.

Jurisdiction.

SEC. 1128. Applications for change of names must be heard and determined by the district courts.

Application for
change of name,
how made.

SEC. 1129. All applications for change of names must be made to the district court of the judicial district where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, by one of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relation or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary or scientific corporation, or any corporation bearing or having for its name or using or being known by the name of any benevolent or charitable order, or society, may, by petition, apply to the district court of the judicial district in which the property of said corporation is situated, for a change of its corporate name. Such petition must be signed by the trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings must be had as upon application for changes of name of natural persons.

Corporation,
change of name
of.

Publication of
petition for.

SEC. 1130. A copy of such petition must be published for four successive weeks, in some newspaper printed in the judicial district, if a newspaper be printed

therein, but if no newspaper be printed in the judicial district, a copy of such petition must be posted for a like period at three of the most public places in the county in which the property of such corporation is situated, or in which the petitioner resides, if the petition is for the change of the name of a natural person, and proofs must be made of such publication or posting before the petition can be considered.

SEC. 1131. Such application must be heard at such time during the term as the court may appoint, and objections may be filed by any person who can, in such objections, show to the court good reasons against such change of name. On the hearing the court may examine upon oath, any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name or dismissing the application, as to the court may seem right and proper.

Hearing of application and remonstrance.

TITLE IX.

OF ARBITRATION.

SEC. 1135. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

What may be submitted to arbitration and when.

SEC. 1136. The submission to arbitration must be in writing and may be to one or more persons.

Submission to arbitration to be in writing.

SEC. 1137. It may be stipulated in the submission that it be entered as an order of the court, for which purpose it must be filed with the clerk of the court where the parties, or one of them reside. The clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered, the submission cannot

Submission may be entered as an order of the court.

Revocation.

be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission is not made an order of the court, it may be revoked at any time before the award is made.

Powers of arbitrators.

SEC. 1138. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Majority of arbitrators may determine any question. They must be sworn.

SEC. 1139. All the arbitrators must meet and act together during the investigation, but when met, a majority may determine any question. Before acting, they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Award to be in writing.

SEC. 1140. The award must be in writing signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award must be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award must be entered by the clerk in the judgment book, and thereupon has the effect of a judgment.

When judgment must be entered.

SEC. 1141. The court, on motion, may vacate the award upon any of the following grounds, and may order a new hearing, before the same arbitrators, or not, in its discretion:

Award may be vacated in certain cases.

1. That it was procured by corruption or fraud;
2. That the arbitrators were guilty of misconduct or committed gross error in refusing, on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced;
3. That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite, or cannot be performed.

SEC. 1142. The court may, on motion, modify or correct the award when it appears:

Court may, on motion, modify or correct the award.

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein;

2. When a part of the award is upon matters not submitted, which part can be separated from other parts and does not affect the decision on the matter submitted;

3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 1143. The decision upon either motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment, if entered before a motion is made, cannot be subject to appeal.

Decision, on motion, subject to appeal, but not the judgment entered before motion.

SEC. 1144. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and the damages sustained in preparing for and attending the arbitration.

If submission be revoked and an action brought, what to be recovered.

TITLE X.

CHAPTER I.

Evidence, Judicial Knowledge.

SEC. 1149. Courts take judicial notice of the following facts:

Certain facts of general notoriety assumed to be true. Specification of such facts.

1. The true signification of all English words and phrases, and of all legal expressions;

2. Whatever is established by law;

3. Public and private official acts of the legislative, executive and judicial department of this Territory and of the United States;

4. The seals of all the courts of this Territory and of the United States;

5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this Territory and of the United States;

6. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States;

7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public;

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort for its aid to appropriate books or documents of reference.

CHAPTER II.

Witnesses.

All persons capable of perception and communication may be witnesses.

SEC. 1154. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although, in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Persons who cannot testify.

SEC. 1155. The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceed-

ing is prosecuted, against an executor or administrator upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person, and equally within the knowledge of both the witness and the deceased person.

SEC. 1156. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate, therefore a person cannot be examined as a witness in the following cases:

Persons in certain relations to parties prohibited

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given therein in the course of professional employment;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

SEC. 1157. The judge himself or any juror may be called as a witness by either party; but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another judge or jury.

Judge or a juror may be witnesses.

SEC. 1158. When a witness does not understand and speak the English language, an interpreter must be shown [sworn] to interpret for him. Any person may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a

When an interpreter to be sworn.

subpoena. Any person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

CHAPTER III.

Public Writings.

Every citizen entitled to inspect and copy public writing.

SEC. 1163. Every citizen has a right to inspect and take a copy of any public writing of this Territory, except as otherwise expressly provided by statute.

Public officers bound to give copies

SEC. 1164. Every public officer having the custody of a public writing, which a citizen has the right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.

Public and private statutes defined.

SEC. 1165. Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Four kinds of public writings.

SEC. 1166. Public writings are divided into four classes:

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records kept in this Territory, of private writings.

Books containing laws presumed to be correct.

SEC. 1167. Books printed or published under the authority of a State, Territory or foreign country, and purporting to contain the statutes, code, or other written law of such State, Territory, or country, or proved to be commonly admitted in the tribunals of such State, Territory or country as evidence of the written law thereof, are admissible in this Territory as evidence of such law.

Certified copy of law or public writing.

SEC. 1168. A copy of the written law or other public writing of any State, Territory or country, attested by the certificate of the officer having charge of the original under the public seal of the State, Territory or country is admissible as evidence of such law or writing.

Other evidence of laws of other States and Territories.

SEC. 1169. The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a State, other Territory, or foreign country, as are also printed and published books of reports of decisions of the

courts of such State, Territory or country, commonly admitted in such courts.

SEC. 1170. The recitals in a public statute are conclusive evidence of the fact recited, for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Recitals in statutes, how far evidence.

SEC. 1171. A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

Judicial record defined.

SEC. 1172. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or by a copy thereof certified by the clerk or other person having the legal custody thereof. That of a State or other Territory may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

Record, how authenticated as evidence.

SEC. 1173. A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the person making the attestation is the clerk of the court, or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the chief judge or presiding magistrate must be authenticated by the certificate of the minister or ambassador, or a consul, vice-consul, or consular agent of the United States in such foreign country.

Record of foreign country, how authenticated.

SEC. 1174. A copy of the judicial record of a foreign country is also admissible in evidence upon proof:

Other evidence of a foreign record.

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

2. That such original was in the custody of the clerk of the court, or other legal keeper of the same; and,

3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court; or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

Manner of proving other official documents.

SEC. 1175. Other official documents may be proved as follows:

1. Acts of the executive of this Territory, by the records, and of the United States, by the records of the departments of the United States certified by the heads of those departments respectively. They may also be proved by public documents, printed by the order of the legislature or Congress, or either house thereof;

2. The proceedings of the legislature of this Territory or of Congress, by the journals of those bodies respectively, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order;

3. The acts of the executive or the proceedings of the legislature of a State or other Territory in the same manner;

4. The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the executive of the United States;

5. Acts of a municipal corporation of this Territory or of a board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book published by the authority of such corporation;

6. Documents of any other class in this Territory, by the original, or by a copy, certified by the legal keeper thereof;

7. Documents of any other class in a State or Territory, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, judge of the supreme, superior, circuit, district, or county court, or mayor of a city of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original;

8. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate under seal of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original;

9. Documents in the departments of the United States government, by the certificate of the legal custodian thereof.

SEC. 1176. A public record of a private writing may be proved by the original record or by a copy thereof, certified by the legal keeper of the record.

Public record of private writing, evidence.

SEC. 1177. Entries in public or other official books or records, made in the performance of his duty by a public officer of this Territory or by any other person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.

Entries in official books, evidence

SEC. 1178. A transcript from the record or docket of a justice of the peace of a State or other Territory, of a judgment rendered by him of the proceedings in the action before the judgment of the execution and return, if any, subscribed by the justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

Justice's judgment, how proved.

SEC. 1179. There must be attached to the transcript a certificate of the justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the justice is a resident at the time of rendering the judgment under the seal of the county, or the seal of the court of common pleas or county court or court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a justice of the peace in the county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

Same.

SEC. 1180. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be; the certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Official certificates contents of

SEC. 1181. A certificate of purchase, or of location of any lands in this Territory, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

Certificates of purchase, primary evidence of ownership.

Entries made by officers and board prima facie evidence.

SEC. 1182. An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is *prima facie* evidence of the facts stated in such entry.

CHAPTER IV.

Private Writings.

Private writings, sealed or unsealed.

SEC. 1187. Private writings are either:

1. Sealed; or,
2. Unsealed.

Seal defined.

SEC. 1188. A seal is a particular sign, made to attest in the most formal manner, the execution of an instrument.

Public and private seals, how made.

SEC. 1189. A public seal in this Territory is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document; upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by a scroll of the pen, or by writing the word "seal" against the signature of the writer: A scroll or other sign, made in a State or other Territory or foreign country, and recognized as a seal, must be so regarded in this Territory.

Scroll or sign.

Books, maps, etc., how far evidence.

SEC. 1190. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

When in possession of adverse party, notice to be given.

SEC. 1191. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

Writings called for and inspected may be withheld.

SEC. 1192. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Writing, how may be proved.

SEC. 1193. Any writing may be proved either:

1. By any one who saw the writing executed; or,

2. By evidence of the genuineness of the handwriting of the maker; or,

3. By a subscribing witness.

SEC. 1194. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

Other witnesses may also testify.

SEC. 1195. When, however, evidence is given that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

When evidence of execution not necessary.

SEC. 1196. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as *prima facie* evidence of the facts stated therein, in the following cases:

Entries of decedents, evidence in specified cases.

1. When the entry was made against the interest of the person making it;

2. When it was made in a professional capacity, and in the ordinary course of professional conduct;

3. When it was made in the performance of a duty specially enjoined by law.

SEC. 1197. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Private writings acknowledged and certified.

SEC. 1198. Every instrument conveying or affecting real property, acknowledged, or proved and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof by affidavit or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

Certified copies, or copies of record admissible without further proof.

SEC. 1199. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

Contents of writing, how proved.

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made;

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice;

3. When the original is a record or other document in the custody of a public officer;

4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statute;

5. When the original consists of numerous accounts or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole. In the cases mentioned in Subdivisions 3 and 4, a copy of the original, or of the record, must be produced; in those mentioned in Subdivisions 1 and 2, either a copy or oral evidence of the contents.

CHAPTER V.

Indispensable Evidence.

To prove perjury
and treason,
more than one
witness required.

SEC. 1204. Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

Will to be in
writing.

SEC. 1205. A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When therefor such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

Transfer of
real property to
be in writing.

SEC. 1206. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering the same, or by his lawful agent thereunto authorized by writing.

SEC. 1207. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

Last section not to extend to certain cases.

SEC. 1208. In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

Agreement not in writing, when invalid.

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in the next section;

3. An agreement made upon consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser, and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

SEC. 1209. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

Engagement to answer for obligation of another when deemed original.

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor, or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained from the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale;

5. When the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

SEC. 1210. No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by, or in the handwriting of the party to be charged.

Representat on
of credit by
writing.

CHAPTER VI.

Production of Evidence.

SEC. 1215. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or

Writing altered,
who to explain.

language of the instrument. If he do that, he may give the writing in evidence, but not otherwise.

SEC. 1216. The process by which the attendance of a witness is required is a subpoena. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpœna for witness defined.

SEC. 1217. The subpoena is issued as follows:

Subpœna, how issued.

1. To require attendance before a court, or at the trial of an issue therein, it is issued in the name of the court, before which the attendance is required, or in which the issue is pending;

2. To require attendance out of the court, before a judge, justice or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it is issued by the judge, justice, or any other officer before whom the attendance is required;

3. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other State or Territory in the United States, or of any other district or county within this Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge, or justice of the peace in places within their respective jurisdiction, with like power to enforce attendance; and, upon certificate of contumacy to said court, to punish contempt of their process, as such judge or justice could exercise if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

SEC. 1218. The service of a subpoena is made by showing the original and delivering a copy, or a ticket containing its substance to the witness personally, or by leaving a copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

Subpœna, how served.

SEC. 1219. If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge, or any officer issuing the subpoena, may, upon proof by affidavit of the concealment, and of

How, if witness be concealed.

the materiality of the witness, make an order that the United States marshal, or the sheriff of the county, serve the subpoena; and the officer must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

When witness is compelled to attend.

SEC. 1220. A witness is not obliged to attend as a witness before any court, judge, justice, or any other officer out of the district if the case in which he is asked to testify is pending in the district court, or if pending in any other court out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Person present compelled to testify.

SEC. 1221. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

Disobedience, how punished.

SEC. 1222. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt of the court or officer issuing the subpoena or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

SEC. 1223. A witness disobeying a subpoena also forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Warrant may issue to bring witness, when.

SEC. 1224. In case of a failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the United States marshal, or to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance was required.

Contents of warrant.

SEC. 1225. Every warrant of commitment, issued by a court or officer pursuant to this Chapter, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to this Chapter, must be directed to the United States marshal, or to the sheriff of the county where the witness may be, and must be executed by the officer in the same manner as process issued by the district court.

SEC. 1226. If the witness be a prisoner, confined in a jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows:

If witness be prisoner, how brought.

1. By the court itself in which the action or special proceeding is pending, unless it be a justice's court;

2. By a justice of the supreme court, judge of the district court or probate judge of the county where the action or proceeding is pending, if pending before a justice's court or before a judge or other person out of court.

SEC. 1227. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

On whose motion.

SEC. 1228. If the witness be imprisoned in the district or county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

How examined.

SEC. 1229. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness or a stay of proceedings, or upon a motion and in any other case expressly permitted by some other provision of this Code.

Affidavits and depositions taken.

SEC. 1230. Evidence of the publication of a document or notice required by law or an order of a court or judge to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman, or principal clerk, annexed to a copy of the document or notice specifying the times when, and the paper in which the publication was made.

Evidence of publication, what.

SEC. 1231. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or clerk thereof. If not so made it may be filed with the recorder of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the judge of the court or officer having it in custody, is *prima facie* evidence of the facts stated therein.

Where filed.

SEC. 1232. An affidavit to be used before any court, judge or officer of this Territory, may be taken before any

Affidavits to be used in this Territory, before whom may be taken.

judge or clerk of any court, or any justice of the peace or notary public in this Territory.

If made in another State or Territory, before whom may be taken.

SEC. 1233. An affidavit taken in another State or Territory of the United States, to be used in this Territory, may be taken before a commissioner appointed by the Governor of this Territory to take affidavits and depositions in such other State or Territory or before any notary public in another State or Territory, or before any judge or clerk of a court of record having a seal.

If made in a foreign country, before whom taken.

SEC. 1234. An affidavit taken in a foreign country to be used in this Territory, may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal, in such foreign country.

Certificate of the clerk, if taken before a judge of a court out of this Territory.

SEC. 1235. When an affidavit is taken before a judge or a court in another State or Territory, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under seal thereof.

Testimony of a witness out of the Territory, when taken.

SEC. 1236. The testimony of a witness out of the Territory may be taken by deposition in an action, at any time after the service of the summons, or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

In the Territory, when taken.

SEC. 1237. The testimony of a witness in this Territory may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant; and, in a special proceeding, after a question of fact has arisen therein in the following cases:

1. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

2. When the witness resides out of the district, when the action is pending in the district court, and out of the county in other cases, in which his testimony is to be used;

3. When the witness is about to leave the district or county where the action is to be tried, and will probably continue absent when the testimony is required;

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

SEC. 1238. The deposition of a witness out of this Territory may be taken upon commission issued from the court, under the seal of the court, upon an order of the judge or court, or probate judge, on the application of either party, upon five days' previous notice to the other. If issued to any place within the United States, it may be directed to any person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace, or person named or commissioned by the officers issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

Testimony of witness out of the Territory, taken upon commission issued under seal, upon notice.

SEC. 1239. Such proper interrogatories, direct and cross, as the respective parties may propose to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

Proper interrogatories may be prepared, or may be waived by the parties.

SEC. 1240. The commission must authorize the commissioners to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope, directed to the clerk or other person designated, or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Authority and duties of commissioner.

SEC. 1241. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Trial, when postponed for reason on non-return of commission.

SEC. 1242. The deposition mentioned in this Chapter may be used by either party on the trial, or other proceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Deposition, by whom used.

SEC. 1243. Either party may have the deposition taken of a witness in this Territory, in either of the cases mentioned in Section 1237, before a judge or officer authorized to administer oaths on serving upon the adverse party, previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence

Depositions may be taken before a judge, etc., upon notice to the adverse party.

of the person to whom the notice is given, unless, for a cause shown, a judge, by order, prescribe a shorter time. When the shorter time is prescribed, a copy of the order must be served with the notice.

Manner of taking deposition.

SEC. 1244. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties, in writing, may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under Subdivisions 2, 3 and 4 of Section 1237, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

May be used by either party on the trial.

When deposition excluded.

SEC. 1245. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof that sufficient notice was not given to the party against whom it is offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

A deposition once taken may be read at any time.

SEC. 1246. When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding, or in any other action between the same parties, upon the same subject, and is then deemed the evidence of the party reading it.

Deposition in this Territory to be used in other States.

SEC. 1247. Any party to an action or special proceeding in a court or before a judge of a State or other Territory, may obtain the testimony of a witness residing in this Territory to be used in such action or proceeding, in the cases mentioned in the next two sections.

How to procure witness upon commission.

SEC. 1248. If a commission to take such testimony has been issued from the court or a judge before whom such action or proceeding is pending, on producing the commission to a district or probate judge, with an affidavit satisfactory to him of the materiality of the testimony,

he may issue a subpoena to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

SEC. 1249. If a commission has not been issued, and it appears to a district or probate judge, or justice of the peace, by affidavit satisfactory to him: How, if no commission.

1. That the testimony of the witness is material to either party;

2. That a commission to take the testimony of such witness has not been issued;

3. That, according to the law of the State or Territory where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge or justice, will be received in the action or proceeding;

He must issue his subpoena, requiring the witness to appear and testify before him at a specified time and place.

SEC. 1250. Upon the appearance of the witness, the judge or justice must cause his testimony to be taken in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that State or Territory requires. Deposition, how taken.

SEC. 1251. If either party requires it, the judge may exclude from the court room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses. Witness not under examination may be excluded.

SEC. 1252. A witness, served with a subpoena, must attend at the time appointed, with any papers under his control required by the subpoena, and answer all pertinent and legal questions; and unless sooner discharged, must remain until the testimony is closed. Witness bound to attend when subpoenaed.

SEC. 1253. A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony. Witness bound to answer questions.

SEC. 1254. Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action Witnesses protected from arrest when attending or going or returning.

while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest to be made void, and party making arrest liable, etc.

SEC. 1255. The arrest of a witness contrary to the preceding section is void, and when willfully made, is a contempt of the court, and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

To make affidavit if arrested.

SEC. 1256. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpoena to attend as a witness before a court, officer or other person, specifying the same, the place of attendance and the action or proceeding in which the subpoena was issued; and,

2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest;

3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officers, and exonerates him from liability for discharging the witness when arrested.

Court to discharge witnesses from arrest.

SEC. 1257. The court or officer issuing the subpoena, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of Section 1254. If the court have adjourned before the arrest, or before application for the discharge, a judge of the court or a probate judge may grant the discharge.

An offer equivalent to tender.

SEC. 1258. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

Whoever pays entitled to receipt.

SEC. 1259. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt, as a condition of the payment or delivery.

CHAPTER VII.

Proceeding to Perpetuate Testimony.

SEC. 1264. The testimony of a witness may be taken and perpetuated as provided in this Chapter.

Evidence may
be perpetuated.

SEC. 1265. The applicant must produce to a district judge, or to a probate judge, a petition verified by the oath of the applicant stating:

Manner of appli-
cation for order.

1. That the applicant expects to be a party to an action in a court in this Territory, and in such case the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated he may not know the parties to such suit; and,

3 The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented, must make an order allowing the examination, and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory, must be formally served, and if unknown, such notice must be served on the recorder of the county where the property to be affected by the evidence is situated, or the judge making the order resides, as may be directed by him, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the recorder of the county to whom the deposition must be returned when taken.

SEC. 1266. The person appointed by the judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service or publication of the notice; to take the deposition of the

Appointee of
judge, authority
of.

witness named in the order of the judge, or in the commission, or if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of taking the deposition.

SEC. 1267. The examination must be by question and answer, and if the testimony is to be taken in another State or Territory, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is judge, and upon interrogatories to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the judge may designate. The deposition when completed, must be carefully read to, and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the recorder of the county designated in the order of the judge allowing the examination, who shall file the same when received. The judge allowing the examination shall file with the recorder the order for examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers filed, prima facie evidence.

SEC. 1268. The petition and order and papers filed by the judge, as provided in the last section, or a certified copy thereof are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this Chapter.

When the evidence may be produced.

SEC. 1269. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witnesses, or that they cannot be found, or are unable, by reason of age or other infirmity, to give their testimony the depositions or copies thereof may be used by either party subject to all legal objections; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

Effect of the deposition.

SEC. 1270. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the relevancy of any question put to him, or of any an-

swer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER VIII.

Administration of Oaths and Affirmations.

SEC. 1275. Every court, every judge or clerk or deputy clerk of any court, every justice, and every notary public, the Secretary of the Territory, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Judicial and certain officers authorized to administer oaths

SEC. 1276. An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form:

Form of ordinary oath to a witness.

"You do solemnly swear (or affirm as the case may be) that the evidence you shall give in this issue (or matter) pending between———and———shall be the truth, the whole truth, and nothing but the truth, so help you God."

SEC. 1277. Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which in his opinion, is more solemn or obligatory, the court may, in its discretion adopt that mode.

Form may be varied to suit witness' belief.

SEC. 1278. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion if there be any such.

Same.

SEC. 1276. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration, by assenting, when addressed in the following form, "You do solemnly affirm (or declare) that," etc., as in Section 1276.

Any person who prefers it may declare or affirm.

CHAPTER IX.

General Provisions.

Jury to decide
questions of fact.

SEC. 1284. All questions of fact, where the trial is by jury, other than those mentioned in the next section are to be decided by the jury, and all evidence thereon is to be addressed to them except when otherwise provided by this Code.

Court to decide
questions of law,
admissibility of
testimony, etc.

SEC. 1285. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is by law made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

Provisions re-
specting evi-
dence before a
jury, made ap-
plicable before
court, referee,
etc.

SEC. 1286. The provisions contained in this part of the Code respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

Moneys paid
into court to be
delivered to
clerk.

SEC. 1287. Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person, or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same.

Conflicting acts
repealed.
Saving clause.

SEC. 1288. All acts and parts of acts in controversion with this Code are hereby repealed, saving and excepting all rights, actions, and rights of action, which shall have accrued, and exist when this Code takes effect, and all actions then commenced shall be prosecuted to a determination in conformity to the rules herein prescribed, so far as applicable.

Approved March 13, 1884.

CHAPTER LVI.

AN ACT relating to Procedure of Probate Courts, in the Settlement of Estates, and in Guardianship.

SECTION 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah as follows:*

CHAPTER I.

Of Wills.

Wills must be proved, and letters testamentary or of administration granted:

1. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died;

Jurisdiction of probate court over the estate, when exercised.

2. In the county in which the decedent may have died, leaving estate therein, he not being a resident of the Territory;

3. In the county in which any part of the estate may be, the decedent having died out of the Territory and not a resident thereof at the time of his death;

4. In the county in which any part of the estate may be, the decedent not being a resident of the Territory, and not leaving estate in the county in which he died;

5. In all other cases, in the county where application for letters is first made.

SEC. 2. When the estate of the decedent is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his death, or being such non-resident, and dying within the Territory, and not leaving estate in the county where he died, the probate court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

When jurisdiction decided by first application.

CHAPTER II.

Of the Probate of Wills.

Custodian of
will to deliver
same, to whom.
Penalty.

SEC. 1. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the probate court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

Who may peti-
tion for probate
of will.

SEC. 2. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the Territory, or a nuncupative will.

Contents of
petition.

SEC. 3. A petition for the probate of a will must show:

1. The jurisdictional facts;
2. Whether the person named as executor consents to act, or renounces his right to letters testamentary;
3. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner;
4. The probable value and character of the property of the estate;
5. The name of the person for whom letters of testamentary are prayed.

No defect of form, or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

When executor
forfeits right to
letter.

SEC. 4. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator and that he is named as executor, fails to petition the proper court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his rights to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

SEC. 5. If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

Will to accompany petition or its presentation prayed for and how enforced.

SEC. 6. When the petition is filed and the will produced, the clerk of the court must set the petition for hearing by the court upon some day not less than ten or more than thirty days from the production of the will. Notice of the hearing shall be given by such clerk by publishing the same in a newspaper of the county; if there is none, then by written or printed notices posted in at least three public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication; and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

Notice of petition for probate, how given.

SEC. 7. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the Territory, at their places of residence, if known to the petitioner, and deposited in the post office, with the postage thereon prepaid, at least ten days before the hearing. If their place of residence be not known, the copies of notice may be addressed to them, and deposited in the post office at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing is equivalent to mailing.

Heirs and named executors to be notified, how.

SEC. 8. The judge or clerk of the probate court may at any time receive petitions for the probate of wills. The judge may make and issue all necessary orders and writs to enforce the production of wills and the attend-

Petition may be presented to judge at chambers, and what judge may do.

ance of witnesses, and may appoint a time for hearing petitions, trials of issue and admitting wills to probate.

Hearing proof
of will
after proof of
service of notice.

SEC. 9. At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will.

Who may
appear and con-
test the will.

SEC. 10. Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided in Section 22 of this Chapter, nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

Probate, when
no contest.

SEC. 11. If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olographic
wills.

SEC. 12. An olographic will may be proved in the same manner that other private writings are proved.

Contesting Probate of Wills.

Contestant to
file grounds of
contest, and pe-
titioner to reply.

SEC. 13. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds mentioned in the Code of Civil Procedure, as grounds of demurrer. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioners and others interested may jointly or separately answer the contestant's grounds, traversing or otherwise obviating or avoiding the objections. All issues whether of law or fact must be tried by the court, unless an issue of fact be referred as hereinafter provided.

Proofs of sub-
scribing wit-
nesses must be
reduced to
writing, etc.

SEC. 14. At the hearing of the contest, the proofs of the subscribing witnesses must be reduced to writing, whereupon the judgment of the court must be rendered,

either admitting the will to probate or rejecting it. If the will is admitted to probate, the judgment, will, and proofs of the subscribing witnesses must be recorded.

SEC. 15. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as evidence of the execution it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

Witnesses, who and how many to be examined. Proof of handwriting admitted when.

SEC. 16. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from the Territory.

Testimony reduced to writing for future evidence.

SEC. 17. If the court is satisfied, upon the proof taken, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof signed by the judge and attested by the seal of the court, must be attached to the will.

If proved, certificate to be attached.

SEC. 18. The will, and a certificate of the proof thereof, must be filed and recorded by the clerk, and the same, when so filed and recorded, shall constitute part of the record in the cause or proceeding. All testimony reduced to writing, shall be filed by the clerk.

Will and proof to be filed and recorded.

SEC. 19. All wills duly proved and allowed in any of the United States or Territories, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate.

Wills proved in other states to be recorded, when and where.

SEC. 20. When a copy of the will and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or clerk must appoint a time for the hearing, notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Proceedings on the production of a foreign will.

SEC. 21. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate in any of the United States or Terri-

Hearing proofs of probate of foreign will.

tories, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this Territory, it must be admitted to probate and have the same force and effect as a will first admitted to probate in this Territory, and letters testamentary or of administration issued thereon.

The probate may be contested within one year.

SEC. 22. When a will has been admitted to probate, any person interested who has not previously contested, may at any time within one year after such probate, contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved, a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation to be issued to parties interested.

SEC. 23. Upon filing the petition, a citation must be issued to the executors of the will, or to the administrators, with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Territory, so far as known to the petitioner, or to their guardians, if any of them are minors, or to their personal representatives, if any of them are dead; requiring them to appear before the court on some day therein specified, to show cause why the probate of the will should not be revoked.

The hearing had on proof of service.

SEC. 24. At the time appointed for showing cause, or at any time to which the hearing is postponed, personal service of the citations having been made upon any person named therein, the court must proceed to try the issues of facts joined in the same manner as in an original contest of a will. If upon hearing the proofs of the parties, the court shall decide that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

On revocation of probate, powers of executor, etc., cease, but not liable for acts done in good faith

SEC. 25. Upon the revocation being made, the powers of the executor, or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Costs and expenses, by whom paid.

SEC. 26. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

SEC. 27. If no person, within one year after the probate of a will, contest the same or the validity thereof, the probate of the will is conclusive, saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Probate, when conclusive, saving clause as to infants and others.

Probate of Lost or Destroyed Wills.

SEC. 28. Whenever any will is lost or destroyed, the probate court must take proof of the execution and validity thereof, and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Proof of lost or destroyed will to be taken.

SEC. 29. No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two creditable witnesses.

Must have been in existence at time of death.

SEC. 30. When a lost will is established the provisions thereof must be distinctly stated and certified by the judge under his hand and the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration, with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in other cases, and shall have the same effect as evidence, as provided in Section 16 of this Chapter.

To be certified, recorded, and letters thereon granted.

SEC. 31. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Courts to restrain injurious acts of executors or administrators during proceedings, etc.

The Proof of Nuncupative Wills.

SEC. 32. Nuncupative wills may at any time, within six months after the testamentary words are spoken by the decedent, be admitted to probate, on petition and notice as provided for the probate of written wills. The petition,

Nuncupative wills, when and how admitted to probate.

in addition to the jurisdictional facts, must allege that the testamentary words or the substance thereof were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Additional requirements in probate of nuncupative wills.

SEC. 33. The probate court must not receive or entertain a petition for the probate of a nuncupative [will] until the lapse of ten days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife, (if any) and all other persons resident in the Territory or county interested in the estate, are notified as hereinbefore provided.

Contest, etc., to conform to provisions as to other wills.

SEC. 34. Contests of the probate of nuncupative wills, and appointments of executors and administrators of the estate devised thereby, must be had, conducted and made as hereinbefore provided in cases of the probate of written wills.

CHAPTER III.

Of Executors and Administrators—Their Letters, Bonds, Removals, and Suspensions.

To whom letters on proved will to issue.

SEC. 1. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as provided in Section 3 of this Chapter.

Who are incompetent as executors or administrators, etc.

SEC. 2. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority;
2. Convicted of an infamous crime;
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

If the sole executor or all the executors are incompetent, or renounce, or fail to apply for letters, or to appear and qualify within thirty days after his or their appointment, letters of administration, with the will annexed, must be issued as designated and provided for the granting of letters in cases of intestacy.

SEC. 3. Any person interested in a will may file objections in writing, to granting letters testamentary to the persons named as executors, or any of them, and the objections must be heard and determined by the court. A petition may, at the same time, be filed for letters of administration, with the will annexed.

Interested parties may file objections.

SEC. 4. When an unmarried woman, appointed executrix, marries, the court or judge thereof may upon the motion of any person interested in the estate, revoke her authority and appoint another person in her place. When a married woman is named in a last will, as executrix, she may be appointed and serve in every respect as a *femme sole*.

When authority of unmarried woman ceases. Married woman may be executrix, etc.

SEC. 5. No executor of an executor shall as such be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration, with the will annexed, of the estate of the first testator, left unadministered, must be issued.

Executor of an executor.

SEC. 6. Where a person absent from the Territory, or a minor, is named executor, if there is another executor who accepts the trust and qualifies, the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed, must be granted, but the court may, in its discretion, revoke them on the return of the absent executor, or the arrival of the minor at the age of majority.

Letters of administration, to minor, etc.

SEC. 7. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust required by the will as effectually for every purpose as if all were appointed, and should act together where there are two executors or administrators. The act of one alone shall be effectual if the other is absent from the Territory, or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority in writing to act for both, and where there are more than two executors or administrators, the act of a majority is valid.

Acts of a portion of executors, valid.

SEC. 8. Administrators, with the will annexed, have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal thereof.

Authority of administrators with will annexed. Letters, how issued.

*Form of Letters.*Form of letters
testamentary.

SEC. 9. Letters testamentary must be substantially in the following form:

Territory of Utah, }
County of ——— }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of——, C. D., who is named therein as such, is hereby appointed executor.

[Seal.] Witness, G. H., clerk of the probate court
of the county of——— with the seal of
the court affixed, the——day of——
A. D. 18—.

By order of the court. G. H., clerk.

Form of letters
of administration
with will
annexed.

SEC. 10. Letters of administration, with the will annexed, must be substantially in the following form:

Territory of Utah, }
County of ——— }

The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of——, and there being no executor named in the will (or as the case may be,) C. D. is hereby appointed administrator with the will annexed.

[Seal.] Witness, G. H., clerk of the probate court
of the county of——, with the seal of
the court affixed, the——day of——
A. D. 18—.

By order of the court. G. H., clerk.

Form of letters
of administration

SEC. 11. Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

Territory of Utah, }
County of ——— }

C. D. is hereby appointed administrator of the estate of A. B., deceased.

[Seal.] Witness, G. H., clerk of the probate court
of the county of ——, with the seal
thereof affixed, the —— day of ——,
A. D. 18—.

By order of the court. G. K., clerk.

Letters of Administration, to Whom, and the Order in which they are Granted.

SEC. 12. Administration of the estate of a person dying intestate, must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his personal estate, or some portion thereof; and they are, respectively, entitled thereto in the following order:

Order of persons entitled to administer. Partner not to administer.

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed;

2. The children;

3. The father or mother;

4. The brothers or sisters;

5. The grandchildren;

6. The next of kin entitled to share in the distribution of the estate;

7. The creditors;

8. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

SEC. 13. Of several persons claiming and equally entitled to administer, relatives of the whole blood must be preferred to those of the half blood.

Preference of persons equally entitled.

SEC. 14. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters, the court may, in its discretion, at the request of another creditor, grant letters to another person legally competent.

In discretion of court to appoint administrator, when.

SEC. 15. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

When minor entitled, who appointed administrator.

SEC. 16. No person is competent or entitled to serve as administrator or administratrix who is:

Who are incompetent to act as administrators.

1. Under the age of majority;

2. Not a *bona fide* resident of the Territory;

3. Convicted of an infamous crime;

4. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married woman
not to be admin-
istratrix, when.

SEC. 17. When objection is made by any person interested in an estate, a married woman must not be appointed administratrix. When an unmarried woman appointed administratrix marries, the court or judge thereof may, upon the motion of any such interested person, revoke her authority and appoint another person in her place.

Petition for Letters and Action thereon.

Applications,
how made.

SEC. 18. Petitions for letters of administration must be in writing, signed by the applicant or his counsel, and filed with the clerk of the court, stating the facts essential to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and are afterward proved in the course of administration, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

When granted.

SEC. 19. Letters of administration may be granted by the court at any time appointed for the hearing of the application, or at any time to which the hearing is continued or postponed.

Notice of
application.

SEC. 20. When a petition praying for letters of administration is filed, the clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing.

Contesting ap-
plications.

SEC. 21. Any person interested may contest the petition, by filing written opposition thereto on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

Hearing of ap-
plication.

SEC. 22. On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing the letters of administration to the party best entitled thereto.

SEC. 23. An entry in the minutes of the court, that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

Evidence of notice.

SEC. 24. Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claiming the issuing of letters to themselves.

Letters of administration may be granted to any applicant

SEC. 25. Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others, and the court may also examine any other person concerning the time, the place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

Proofs to be made before granting letters of administration

SEC. 26. Administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in the court. When the person entitled is a non-resident of the Territory, affidavits taken *ex parte* before officer authorized by the law of this Territory to take acknowledgments and administer oaths of this Territory, may be received as *prima facie* evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

Letters may be granted to others than those entitled.

Revocation of Letters and Proceedings Therefor.

SEC. 27. When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them who is competent, and who has not had an opportunity to apply, or any competent person at the written request of any one of them, may obtain the revocation of the letters and be entitled to the administration, by presenting to the court a petition praying the revocation and that letters of administration may be issued to him.

Revocation of letters of administration.

SEC. 28. When such petition is filed the clerk must in addition to the notice provided in Section 20 of this Chapter, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

When petition filed citation to issue.

SEC. 29. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties; and if the

Hearing of petition for revocation.

petition of the applicant is established and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

Prior rights of relatives entitles them to revoke prior letters.

SEC. 30. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister, of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his prior right and obtain letters of administration and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Oaths and Bonds of Executors and Administrators, etc.

Administrator or executor to take oath. Letters and bond to be recorded.

SEC. 31. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court having jurisdiction of the estates, in books to be kept by him in his office for that purpose.

Bond of administrators, form and requirement of.

SEC. 32. Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the Territory of Utah, with two or more sufficient sureties, to be approved by the probate court or judge thereof. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits and issues of real property belonging to the estate, which values must be ascertained by the probate court, or judge thereof, by examining on oath the party applying, and any other persons.

Additional bonds, when required.

SEC. 33. The probate court, or judge thereof, must require an additional bond whenever the sale of any real estate belonging to an estate is ordered; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof is equal to twice the value of the personal property remaining in or that will come into the possession of the executor or administrator, including the annual rents, profits, and

issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

SEC. 34. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Condition of bond.

SEC. 35. When two or more persons are appointed executors or administrators, the probate court or judge thereof must require and take a separate bond from each of them.

Each, or more than one administrator, and to give separate bonds.

SEC. 36. The bond shall not be void upon the first recovery but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Several recoveries may be had on same bond.

SEC. 37. In all cases where bonds or undertakings are required to be given under this act the sureties must justify thereon in the same manner and in like amounts as required in the general provisions of the Code of Civil Procedure, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds and undertakings must be approved by the judge of the probate court before being filed or recorded.

Sureties must justify and bonds be approved.

SEC. 38. Before the judge approves any bond required under this act, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value, and the judge must, at the same time, cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

Citation and requirements of judge on deficient bond.

Additional security.

SEC. 39. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

Right ceases, when.

When bond may
be dispensed
with.

SEC. 40. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue, and sales of real estate be made and confirmed without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond, as in other cases.

Petition showing
failing sureties,
and asking for
further bonds.

SEC. 41. Any person interested in an estate may, by verified petition, represent to the probate court, that sureties of the executors or administrators thereof have become or are becoming, insolvent, or that they have removed, or are about to remove, from the Territory, or that from any other cause the bond is insufficient, and ask that further security be required.

Citation to
executor, etc.,
to show cause
against such
application.

SEC. 42. If the probate court or judge thereof is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded, or cannot be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court or the judge thereof may order.

Further security
may be ordered.

SEC. 43. On the return of citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not less than five days.

Neglecting
to obey order.

SEC. 44. If the executor or administrator neglects to comply with the order within the time prescribed, the judge must by order revoke his letters, and his authority must thereupon cease.

Suspending
powers of execu-
tor, etc.

SEC. 45. When a petition is presented, praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, no bond was originally required, and it is alleged on oath that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Further security
ordered without
application of
party in interest.

SEC. 46. When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the judge, without any application, must cause

him to be cited to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

SEC. 47. When a surety of an executor or administrator desires to be released from responsibility on account of future acts, he may make application to the probate court or the judge thereof for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security. If he has absconded, left or removed from the Territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in Section 42 of this Chapter.

Release of
sureties.

SEC. 48. If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

New sureties.

SEC. 49. If the executor or administrator neglects or refuses to give new sureties to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or judge must by order revoke his letters.

Neglect to
give, forfeiture of
letters.

SEC. 50. The application authorized by the nine preceding sections of this Chapter may be heard and determined at any time. All orders made therein must be entered upon the minutes of the court.

Applications to
be determined
at any time.

SEC. 51. The liability of principal and sureties upon the bond of an executor, administrator or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable.

Liability on
bond.

Special Administrators, and their Powers and Duties.

SEC. 52. When there is delay in granting letters testamentary or of administration from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an executor or administrator dies, or is suspended, or removed, the probate court must appoint a special administrator to collect and take charge of the estate of the decedent in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

Special admin-
istrator, when
appointed

Special letters
may be issued at
any time.

SEC. 53. The appointment may be made at any time and without notice, and must be made by entry upon the minutes of the court specifying the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person in conformity with the order.

Preference given
to persons en-
titled to letters.

SEC. 54. In making the appointment of a special administrator, the court or judge must give preference to the person entitled to letters testamentary or of administration.

Special adminis-
trator to give
bond and take
oath.

SEC. 55. Before any letters issue to any special administrator, he must give bond in such sum as the court or judge may direct, with sureties to the satisfaction of the court or judge, conditioned for the faithful performance of his duties, and he must take the usual oath and have the same indorsed on his letters.

Duties of special
administrator.

SEC. 56. The special administrator must collect and preserve for the executor, or administrator, all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues and profits, claims, and demands of the estate; must take the charge and management of, enter upon and preserve from damage, waste, and injury, the real estate, and for such and all necessary purposes may commence and maintain or defend suits and other legal proceedings, as an administrator; he may sell such perishable property as the court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent.

Issuing letters
testamentary
ends power of
special adminis-
trator.

SEC. 57. When the letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Special admin-
istrator to render
account.

SEC. 58. The special administrator must render an account, on oath, of his proceedings, in a like manner as other administrators are required to do.

Wills found after Letters of Administration Granted, and Miscellaneous Provisions.

SEC. 59. If after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked and the power of the administrator ceases, and he must render an account of his administration within such time as the court shall direct.

On proof of will, after letters of administration, letters revoked.

SEC. 60. In such case the executor or administrator, with the will annexed, is entitled to demand, sue for, recover and collect all rights, goods, chattels, debts and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Power of executor in such a case

SEC. 61. In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

Remaining administrator or executor to continue when his colleagues are disqualified.

SEC. 62. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the court must issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrator so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Who to act when all acting are incompetent.

SEC. 63. Any executor or administrator, may, at any time, by writing filed in the probate court, resign his appointment, having first settled his accounts and delivered up the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in any such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such

Executor or administrator may resign, when. Court to appoint successor. Liability of outgoer.

executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

All acts of executor, etc., valid until his power is revoked

SEC. 64. All acts of an executor or administrator, as such before the revocation of his letters testamentary, or of administration, are as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Transcript of court minutes to be evidence.

SEC. 65. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

Disqualification of Judges and Transfers of Administration.

When judge not to act.

SEC. 66. No will shall be admitted to probate, or letters testamentary or of administration granted, before any judge who is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or is in any other manner interested or disqualified from acting.

Judge being disqualified, proceedings to be transferred, and where.

SEC. 67. When a petition is filed in the probate court, praying for admission to probate of a will or for granting letters testamentary or of administration, or when proceedings are pending in the probate court for the settlement of an estate, and the judge of said court is disqualified from acting, an order must be made transferring the proceeding to the probate court of an adjoining county, and the clerk of the court ordering the transfer must transmit to the clerk of the court to which the proceeding is ordered to be transferred, a certified copy of the order, and all the papers on file in his office in the proceeding; and thereafter the court to which the proceeding is transferred shall exercise the same authority and jurisdictions over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

SEC. 68. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate, in the order hereinbefore provided. If, before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as judge of the court wherein such proceeding was originally commenced, who is not disqualified to act in settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred, by filing a petition setting forth these facts, and moving the court therefor.

Transfer not to change right to administer. Re-transfer, how made.

SEC. 69. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the judge must make an order transferring the proceeding back to the court where it was originally commenced; and the clerk of the court ordering the transfer must transmit to the clerk of the court in which the proceeding was originally commenced, a certified copy of the order, and all the original papers on file in his office in the proceeding; and the court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

When proceedings to be returned to original court.

Removals and Suspensions in Certain Cases.

SEC. 70. Whenever the judge of the probate court has reason to believe, from his own knowledge, or from creditable information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate, or who has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator, until the matter is investigated.

Suspension of powers of executor.

Executor to have notice of, and to be cited to appear.

SEC. 71. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew as the case may require.

Any party interested may appear on hearing.

SEC. 72. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

Notice to absconding executors and administrators.

SEC. 73. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

May compel attendance.

SEC. 74. In the proceedings authorized by the four preceding sections for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

Of the Inventory and Collection of the Effects of Decedents.

Inventory to be returned, including the homestead.

SEC. 1. Every executor or administrator must make and return to the court, within three months after his appointment a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Appraisement and pay of appraisers.

SEC. 2. To make the appraisement, the court or the judge thereof, must appoint three disinterested persons, (any two of whom may act) who are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the

estate is in any other county than that in which letters issued, appraisers thereof may be appointed, either by the court or judge having jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction.

SEC. 3. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them according to the best of their knowledge and ability; they must then proceed to estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite the articles, respectively; the inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities, for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the endorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt, interest, or security; the inventory must show, so far as the same can be ascertained by the executor, or the administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

Oath of appraisers and inventory, how made.

SEC. 4. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator; and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Inventory to account for moneys. If all money no appraisement necessary.

SEC. 5. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

Effect of naming a debtor executor.

SEC. 6. The discharge or bequest in a will of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent but is a specific bequest of the debt or demand. It must be included in the inventory, and if necessary, applied in the payment of the debts. If not necessary for

Discharge or bequest of debt against executor

that purpose, it must be paid in the same manner and proportion as other specific legacies.

To make oath to inventory.

SEC. 7. The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be indorsed upon or annexed to the inventory.

Letters may be revoked for neglect of administrator.

SEC. 8. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall for reasonable cause allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for an injury to the estate, or any person interested therein, arising from such failure.

Inventory of after-discovered property.

SEC. 9. Whenever property not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this Chapter, and an inventory thereof, to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Administrator or executor to possess real and personal estate.

SEC. 10. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate until the estate is settled, or until delivered over by order of the court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings and fixtures thereon which are under his control. The heirs or devisees may themselves, or jointly with the the executor or administrator, maintain an action for the possession of the real estate or for the purpose of quieting title to the same, against any one except the executor or administrator; but this section shall not be so construed as requiring them so to do.

When executor or administrator to deliver possession of all real estate to heirs, etc.

SEC. 11. Unless it satisfactorily appear to the court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the deceased, or that it will probably be necessary to sell the real estate for the payment of such debts, the court, at the end

of the time limited for the presentation of the claims against the estate, must direct the executor or administrator to deliver possession of all the real estate to the heirs-at-law or devisees.

Embezzlement and Surrender of Property of the Estate.

SEC. 12. If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels, or effects of a decedent, he is chargeable therewith and liable to an action by the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Embezzling estate before grant of letters testamentary.

SEC. 13. If any executor, or administrator, or other person interested in the estate of a decedent, complains to the probate court or the judge thereof, on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any lost will, the said court or judge may cite such person to appear before such court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where the decedent dies, or where letters have been granted, he may be cited and examined either before the probate court of the county where he is found or before the probate court of the county where the decedent dies, or where letters have been granted. But if, in the latter case, he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

Citation to person suspected to have embezzled estate, etc.

SEC. 14. If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidences of or tending to disclose the

Refusal to obey citation, penalty for, and for embezzlement, etc.

right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand or any lost will of the decedent, the court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. The order for such disclosure made upon such examination shall be *prima facie* evidence of the right of the executor or administrator to such property in an action brought in a court of competent jurisdiction for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Persons entrusted with estate of decedent may be cited to account.

SEC. 15. The probate court or judge thereof, upon the complaint, on oath, of any executor or administrator, may cite any person who has been intrusted with any part of the estate of the decedent to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

Of the Provisions for the Support of the Family and of the Homestead.

Widow and minor children may remain in decedent's house, etc.

SEC. 1. When a person dies, leaving a widow, or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the probate court or the judge thereof.

SEC. 2. Upon the return of the inventory or at any subsequent time during the administration, the court may, on its own motion, or on petition therefor, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all the property exempt from execution, including the homestead selected, designated, and recorded; *Provided*, Such homestead was selected from the common property, or from the separate property, of the persons selecting or joining in the selection of the same. If none has been selected, designated, and recorded, or in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court must select, designate, and set apart, and cause to be recorded, a homestead for the use of the surviving husband or wife and the minor child or children; or if there be no surviving husband or wife, then for the use of the minor child or children, in the manner provided in this Chapter, out of the common property, or if there be no common property, then out of the real estate belonging to the decedent.

All property exempt from execution to be set apart for use of family.

SEC. 3. If the amount set apart be insufficient for the support of the widow and children, or either, the court must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

May make extra allowance.

SEC. 4. Any allowance made by the court, in accordance with the provisions of this Chapter, must be paid in preference to all other charges, except funeral charges and expenses of administration; and any such allowances whenever made, may, in the discretion of the court, or judge, take effect from the death of the decedent.

Payment of allowance.

SEC. 5. When property is set apart to the use of the family, in accordance with the provisions of this Chapter, if the decedent left a widow or surviving husband, and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children. If the property set apart be a homestead, selected from the sepa-

Property set apart, how apportioned between widow and children.

rate property of the decedent, the court can only set it apart for a limited period, to be designated in the order, and the title vests in the heirs of the decedent, subject to such order.

When estate to go to wife and child; when to be summarily administered.

SEC. 6. If, upon the return of the inventory of the estate of a deceased person, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars, and if there be a widow or minor children of the decedent, the court or the judge thereof, shall, by order, require all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be assigned for the use and support of the family of the decedent. Notice thereof shall be given and proceedings had in the same manner as provided in sections 19, 21, and 24, Chapter X., of this Act. If, upon the hearing, the court finds that the value of the estate does not exceed the sum of fifteen hundred dollars, it shall, by a decree for that purpose, assign for the use and support of the widow and minor children, if there be a widow and minor children, and if no widow, then for the children, if there be any, and if no children, then for the widow, the whole of the estate after the payment of the expenses of last illness of the deceased, funeral charges, and expenses of administration, and there must be no further proceedings in the administration, unless further estate be discovered.

When all property to go to children.

SEC. 7. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this Chapter, the whole property so set apart, other than the homestead, must go to the minor children.

Of the Homestead.

Rights of survivor to homestead.

SEC. 8. If the homestead selected by the husband and wife or either of them, during their coverture, and recorded while both were living, was selected from the community property, or from the separate property of the person selecting or joining in the selection in the same, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either the husband or the wife, without his or her consent, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the probate court to assign it for a limited period to the family of the decedent. In either case it is not subject to the payment of any debt or liabil-

contracted by or existing against the husband and wife, or either of them previous to or at the time of the death of such husband or wife, except in satisfaction of judgments obtained.

1. Before the declaration of homestead was filed for record and which constitute liens upon the premises;

2. On debts secured by mechanics, laborers, or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged for any portion of the purchase price thereof or by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

SEC. 9. If the homestead selected and recorded prior to the death of the decedent be returned in the inventory appraised at not exceeding the amount of homestead exemption as provided in the Code of Civil Procedure, the probate court must, by order, set it off to the persons in whom title is vested by the preceding section. If there be subsisting liens or incumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims against the estate the claims so secured must be paid out of such funds. If the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed, and the liens or incumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.

Selected and recorded homestead set off to persons entitled. Subsisting liens to be paid by solvent estate.

SEC. 10. If the homestead, as selected and recorded, be returned in the inventory appraised at more than the amount of homestead exemption, as provided in the Code of Civil Procedure, the appraisers must, before they make their return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceed said amount of homestead exemption, the appraisers must determine whether the premises can be divided without material injury, and if they find that they can be thus divided they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in value to said amount of homestead exemption and make report thereof, giving the metes, bounds, and full description of the portion set apart as a homestead. If the appraisers find that

When appraisers to carve out a homestead, amount of.

the premises exceeded in value, at the time of their selection, the said amount of homestead exemption as provided in the Code of Civil Procedure, and that they cannot be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

Report of appraisers, how may be confirmed.

SEC. 11. Any two of the appraisers concurring may discharge the duties imposed upon the three, and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

Day to beset for confirming or rejecting, appeal.

SEC. 12. When the report of the appraisers is filed, the court must set a day for hearing any objections thereto from any one interested in the estate. Notice of the hearing must be given for such time and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report as upon the first report.

Costs, to whom chargeable.

SEC. 13. The costs of all proceedings in the probate court provided for in this Chapter, must be paid by the estate as expenses of administration. Persons succeeding by purchase or otherwise to the interests, rights and title of successors to homesteads, or to the right to have homesteads set apart to them, as in this Chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Persons succeeding to rights of homestead owners have, etc.

Certified copies of certain orders to be recorded.

SEC. 14. A certified copy of every final order made in pursuance of this Chapter, by which a report is confirmed, property assigned, or sale confirmed, must be recorded in the office of the recorder of the county where the homestead property is situated.

CHAPTER VI.

Of Claims Against the Estate.

SEC. 1. Every executor or administrator must immediately after his appointment, cause to be published in some newspaper of the county if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice; such notice must be published as often as the judge or court shall direct, but not less than once a week for four weeks; the court or judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation.

Notice to creditors. Additional notice.

SEC. 2. The time expressed in the notice must be ten months after its first publication when the estate exceeds in value the sum of two thousand dollars, and four months when it does not.

Time expressed in the notice.

SEC. 3. Within thirty days after the notice is given, as required by the preceding section, a copy thereof, with the affidavit of due publication, or of publication and posting, must be filed, and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

Copy and proof of notice to be filed and order made.

SEC. 4. All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; *Provided, however,* That when it is made to appear by the affidavit of the claimant, to the satisfaction of the court, or judge thereof, that the claimant had no notice as provided in this Chapter, by reason of being out of the Territory, it may be presented at any time before a decree of distribution is entered.

Time within which claims against an estate must be presented.

Claims to be sworn to, and when allowed to bear interest.

SEC. 5. Every claim which is due, when presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the courts of this Territory.

Probate judge may present claim, and action thereon.

SEC. 6. The judge of the probate court may present a claim against the estate of a decedent for allowance to the executor or administrator thereof, and if the executor or administrator allows the claim, he must in writing designate the judge of the probate court of an adjoining county, who, upon the presentation of such claim to him, is vested with power to allow or reject it, and the judge presenting such claim, in case of its rejection by the executor or administrator, or by such judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Allowance and rejection of claims.

SEC. 7. When a claim, accompanied by the affidavit required in this Chapter, is presented to the executor or administrator, he must endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it must be presented to the judge of the probate court for his approval, who must in the same manner indorse upon it his allowance or rejection. If the executor or administrator, or the judge, refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary under seal, shall be *prima facie* evidence of such presentation and the date thereof. If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of

claims, the same is presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time. If the claim be payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

SEC. 8. Every claim allowed by the executor or administrator, and approved by the judge of the probate court, or a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited, if demanded, unless it be lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof, be secured by a mortgage, or other lien which has been recorded in the office of the recorder of the county in which the land affected by it lies, it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

Approved
claims or cop-
ies to be filed.
Claims secured
by liens may be
described. Lost
claims.

SEC. 9. When a claim is rejected, either by the executor or administrator, or the judge of the probate court, the holder must bring suit in the proper court against the executor or administrator within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim shall be forever barred.

Rejected
claims to be
sued for within
three months.

SEC. 10. No claim must be allowed by the executor or administrator, or the judge of the probate court, which is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may, in his discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim.

Claims barred
by time. When
and who judge
may examine.

Claims must be presented before suit.

SEC. 11. No holder of any claim against an estate shall maintain any action thereon unless the claim is first presented to the executor or administrator, except in the following case: An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint; but no counsel fees shall be recovered in such action unless such claim be so presented.

Time of limitation.

SEC. 12. The time during which there shall be a vacancy in the administration must not be included in any limitations herein prescribed.

Claims in action pending at time of decease.

SEC. 13. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentations required.

Allowance of claim in part:

SEC. 14. Whenever any claim is presented to an executor or administrator, or the judge, and he is willing to allow the same in part, he must state in his endorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recover a greater amount than that offered to be allowed.

Effect of judgment against executor.

SEC. 15. A judgment rendered against an executor or administrator, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment must be that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment must be filed among the papers of the estate in court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Execution not to issue after death. If one is levied the property may be sold.

SEC. 16. When any judgment has been rendered for or against the testator or intestate, in his lifetime, no execution shall issue thereon after his death, except as provided in the Code of Civil Procedure relative to executions. Judgment against the decedent for the recovery of money must be presented to the executor or administrator like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be

sold for the satisfaction thereof, and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his life time may redeem any real estate of the decedent from any sale under foreclosure or execution, in like manner and with like effect as if the judgment debtor were still living.

SEC. 17. A judgment rendered against a decedent dying after a verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

What judgment is not a lien, etc.

SEC. 18. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant to refer the matter in controversy to some disinterested person to be approved by the probate court or judge. Upon filing the agreement and approval of the probate court or judge in the office of the clerk of the court for the county in which the letters testamentary or of administration were granted, the clerk must enter a minute of the order referring the matter in controversy to the person so selected, or if the parties consent a reference may be had in the court and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and judge.

May refer doubtful claims.

Effect of referees' allowance or rejection.

SEC. 19. The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report and adjudge costs as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual in all respects as if the same had been rendered in a suit commenced by ordinary process.

Trial by referee, how conformed and its effect.

SEC. 20. When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Liability of executor, etc., for costs.

Claims of executor, etc., against the estate.

SEC. 21. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavit, must be presented for allowance or rejection to the judge of the probate court, and its allowance by the judge is sufficient evidence of its correctness, and must be paid as other claims in due course of administration. If, however, the judge reject the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant recover no judgment, he must pay all costs, including defendant's reasonable attorney's fees, to be fixed by the court.

Executor neglecting to give notice to creditors, etc.

SEC. 22. If an executor or administrator neglects, for two months after his appointment, to give notice to creditors, as prescribed by this Chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Executor to return statement of claims.

SEC. 23. At the time at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate which have been presented to him, if so required by the court, or judge, and from time to time thereafter he must present a statement of claims subsequently presented to him, if so required by the court or judge. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by him.

Interest-bearing debt may be paid without presentation of claim.

SEC. 24. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

CHAPTER VII.

Of Sales and Conveyances of Property of Decedents.

SEC. 1. All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this Act. And the said property, personal and real, may be sold as the court may direct, in the manner prescribed in this Chapter. There shall be no priority as between personal and real property for the above purposes.

Personal estate
first chargeable.
Real estate,
when sold.

SEC. 2. No sale of any property of an estate of a decedent is valid unless made under order of the probate court, except as otherwise provided in this Chapter. All sales must be reported under oath to and confirmed by the court before the title to the property sold passes.

No sales valid
except by order
of court.

SEC. 3. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary and, upon hearing, any person interested in the estate may file his written objections, which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defects be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

Applications for
order of sale.

SEC. 4. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in Section 5 of this Chapter. The court, when a petition for the sale of any property for any of the purposes herein named is presented must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate; in such case the petition must set forth substantially the facts required by Section 16 of this Chapter.

But one petition,
order and sale
must be had
when possible.

Sales of Personal Property.

SEC. 5. At any time after receiving letters, the ex-

Perishable and depreciating property to be sold.

ecutor, administrator, or special administrator may apply to the court or judge and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice, but the executor, administrator, or special administrator is responsible for the property, unless after making a sworn return, and on a proper showing, the court shall approve the sale.

Order to sell personal property.

SEC. 6. If claims against the estate have been allowed, and a sale of property is necessary for their payment, or for the expenses of administration, or for the payment of legacies, the executor or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application from time to time so long as any personal property remains in his hands, and sale thereof is necessary. If it appears for the best interests of the estate, he may, at any time after filing the inventory, in like manner, and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Partnership interests and choses in action, how sold.

SEC. 7. Partnership interests or interests belonging to any estate by virtue of any partnership formally existing, interests in personal property pledged, and choses in action may be sold in the same manner as other personal property, when it appears to be for the best interests of the estate. Before confirming the sale of any partnership interests, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the county and able to be present in court.

Order of sale, what to direct and what to be first sold.

SEC. 8. If it appears that the sale is necessary for the payment of debts or the family allowance, or for the best interests of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or judge must order it to be made. In making orders and sales for the payment of debts or family allowance, such articles as are not nec-

essary for the support and subsistence of the family of the decedent, or are not specially bequeathed, must be first sold, and the court or judge must so direct.

SEC. 9. The sale of personal property must be made at public auction for such money or currency as the court may direct, and after public notice given for at least ten days by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold, unless for good reason shown, the court, or judge, orders a private sale or a shorter notice. Public sales of such property must be made at the court house door, or at the residence of the decedent, or at some other public place; but no sale shall be made of any personal property which is not present at the time of sale, unless the court otherwise orders.

Sale of personal property.

Summary Sales of Mines and Mining Interests.

SEC. 10. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines, or interests in mines, such mines or interests may be sold under the order of the court having jurisdiction of the estate, as herein provided.

Mines may be sold, how.

SEC. 11. The executor or administrator, or any heir at law, or creditor of the estate, or any partner or member of any mining company, in which interests or shares are held or owned by the estate, may file in court a petition, in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Petition for sale, who may file and what to contain.

SEC. 12. Upon the presentation of such petition, the court or judge must make an order directing all persons interested to appear before such court, at a time and place specified, not less than four or more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mine, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate at least ten

Order to show cause, how made and on what notice.

days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as such court or judge shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Order of sale,
when and how
made.

SEC. 13. If, upon hearing the petition, it appears to the satisfaction of the court that it is to the interest of the estate that such mining property or interests of the estate should be sold, or that an immediate sale is necessary, in order to secure the just rights or interests of the mining partners, or tenants in common, such court must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

Further pro-
ceedings to
conform to this
Chapter.

SEC. 14. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be in conformity with the provisions of this Chapter.

The Sale of Real Estate, Interests Therein, and Confirmation Thereof.

To sell real
estate, when.

SEC. 15. When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies, the executor or administrator may also sell any real as well as personal property of the estate for that purpose upon the order of the court; and an application for the sale of real property may also embrace the sale of personal property.

Verified petition
for sale, what to
contain and
to what it may
refer.

SEC. 16. To obtain such order for the sale of real property, he must present a verified petition to the probate court, or judge thereof, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a general description of all of the real property of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value thereof, and whether the same be community or separate property; the names of the legatees and devisees, if any, and of the heirs of the deceased, so far as known to the petitioner.

If any of the matters here enumerated cannot be ascertained, it must be so stated in the petition; but a failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceeding, if the defect be supplied by the proofs at the hearing, and the general facts showing such necessity be stated in the decree.

SEC. 17. If it appears to the court or judge, from such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed, and an order thereupon made, directing all persons interested in the estate, to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Order to persons interested to appear

SEC. 18. A copy of the order to show cause must be personally served on all persons interested in the estate, any general guardian of a minor so interested, and any legatee, or devisee, or heir of the decedent, provided they are residents of the county, at least ten days before the time appointed for hearing the petition, or be published four successive weeks in such newspaper as the court or judge shall direct. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with, and the hearing may be had at any time.

Copy to be served, assent given, or publication made.

SEC. 19. The court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order by affidavit or otherwise, if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application. All claims against the decedent not before presented, if the period of presentation has not elapsed, may be presented and passed upon at the hearing.

Hearing after proof of service. Presentation of claims.

SEC. 20. The executor, administrator, and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the court or judge, in the same manner and with like effect as in other cases.

Administrator, etc., may be examined.

To sell real estate, or any part, when.

SEC. 21. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate, or of any part thereof necessary and for the best interest of all concerned.

Order of sale, when to be made.

SEC. 22. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this Chapter, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial.

What order of sale must contain.

SEC. 23. The order of sale must describe the lands to be sold and the terms of sale, which may be for cash, or on a credit not exceeding one year, payable in gross or in instalments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell, by order of the court, made on motion, after due notice by any party interested.

May be at public or private sale.

Interested persons may apply for order of sale.

SEC. 24. If the executor or administrator neglects to apply for an order of sale where it is necessary, any person interested may make application therefor, in the same

manner as the executor or administrator, and notice thereof must be given to the executor or administrator, before the hearing. The petition of such applicant must contain as many of the matters set forth in Section 16 of this Chapter as he can ascertain, and the decree of sale must fix the period of time within which the executor or administrator must make the sale.

SEC. 25. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in at least three public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for three weeks successively next before the sale. The lands and tenements to be sold must be described with common certainty in the notice.

Notice of sale.

SEC. 26. Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in the notice of sale unless the same is postponed.

Time and place

SEC. 27. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in at least three public places in the county in which the land is situated, and published in a newspaper if there be one printed in the same county, if none, then in such paper as the court or judge thereof may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the

Private sale of
real estate, how
made. Notice.

Bills, when and
how received.

first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order.

Ninety per cent.
of appraised
value must be
offered.

SEC. 28. No sale of real estate at private sale shall be confirmed by the court, unless the sum offered is at least ninety per cent. of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed, and they must make an appraisement thereof, in the same manner as in case of an original appraisement of an estate. This may be done at any time before the sale or the confirmation thereof.

Purchase money
on sale on credit,
how secured.

SEC. 29. The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment; *Provided*, That at least ten per cent. of the purchase money shall be at time of sale.

Hearing and set-
ting aside sale,
and when re-sale
may be ordered.

SEC. 30. The executor or administrator shall within thirty days after making any sale of real estate, make a return of his proceedings to the court, which must be filed in the office of the clerk. A hearing upon the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the court or judge must fix the day for hearing, of which notice of at least ten days must be given by the clerk, by notices posted in at least three public places in the county, or by publication in a newspaper, or both, as the court or judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent., exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place. If an offer of ten per cent. more in amount than that named in the return be made to the court in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

SEC. 31. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof, and may be heard thereon, when the return is heard by the court or judge, and may produce witnesses in support of his objections.

May file objections, when and who.

SEC. 32. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid mentioned in Section 30 of this Chapter be made and accepted by the court, the court must make an order confirming the sale, and directing conveyances to be executed. The sale from that time is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed, must be recorded in the office of the recorder of the county in which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and the expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

When order of confirmation is to be made, and when not.

SEC. 33. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the court authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the county recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent in the premises at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest, also passes by such conveyances.

Conveyances.

SEC. 34. Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

Order of confirmation, what to state.

SEC. 35. If at the time appointed for the sale, the executor or administrator deems it for the interest of all persons

Sale may be postponed.

concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

Notice of
postponement

SEC. 36. In case of postponement, notice thereof must be given, by a public declaration, at the time and place first appointed for the sale, and if the postponement be for more than one day, further notice must be given, by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Where payment
of debts, etc.,
provided for by
will.

SEC. 37. If the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

Sale without
order, may re-
quire security.

SEC. 38. When property is directed by the will to be sold, or authority is given by the will to sell property, the executor may sell any property of the estate without order of the court, and at either public or private sale, and with or without notice, as the testator may have directed, but the executor must make return of such sales, as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale be confirmed by the court.

Where provision
by will insuffi-
cient.

SEC. 39. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this Chapter.

Estate subject
to debts, etc.

SEC. 40. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies; but specific devises or legacies are exempt from such liability, if there is other sufficient estate.

Contribution
among legatees.

SEC. 41. When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the court, when distribution is made, must by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from

their distributive shares, respectively, for the purpose of paying each contribution.

SEC. 42. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this Chapter for the sale of lands of which he died seized, except as hereinafter provided.

Contracts for purchase of lands may be sold, how.

SEC. 43. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such, the sale must not be confirmed by the court until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the court or judge shall approve.

Conditions of sale.

SEC. 44. The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator and the persons so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract.

Purchaser to give bond.

SEC. 45. Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right title and interest of the estate, or of the persons entitled to the interest of the decedent in the lands sold at the time of the sale; and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he were living.

Executor to assign contract.

SEC. 46. When any sale is made by an executor or administrator, pursuant to provisions of this Chapter, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first, to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the land is subject to such mortgage or lien until the pur-

Sales by executors or administrators of lands under mortgage or lien.

chase money has been actually so applied. No claim against any estate, which has been presented and allowed, is affected by the statutes of limitations, pending the proceedings for the settlement of the estate. The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the court, to be received by the clerk thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the clerk of the court without delay, in payment of the expenses of the sale, and in satisfaction of the debt to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator, unless for good cause shown, after notice to the executor or administrator, the court otherwise directs.

The holder of mortgage, etc., may purchase lands, etc.

SEC. 47. At any sale, under order of the court, of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment *protanto*. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court, or the clerk thereof, an amount sufficient to pay such expenses.

Administrator, etc., liable for misconduct in sale.

SEC. 48. If there is any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

Fraudulent sales.

SEC. 49. Any executor or administrator who fraudulently sells any real estate of a decedent contrary to or otherwise than under the provisions of this Chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation of actions for vacating sale,¹ etc.

SEC. 50. No action for the recovery of any estate sold by an executor or administrator, under the provisions of this Chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after such sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

To what cases preceding section does not apply.

SEC. 51. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues; but all such

persons may commence an action at any time within one year after the removal of the disability.

SEC. 52. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the court, within thirty days thereafter, an account of sales verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Account of sale
to be returned

SEC. 53. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must be interested in any sale.

Executor, etc.,
not to be
purchaser.

CHAPTER VIII.

Of the Powers and Duties of Executors and Administrators, and of the Management of Estates.

SEC. 1. The executor or administrator must take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator for the purposes of administration as provided in this Act.

Executors to
take possession
of the entire
estate.

SEC. 2. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

Actions for
recovery of
property.

SEC. 3. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on real estate of the decedent in his lifetime.

May maintain
actions for
waste, conver-
sion and tres-
pass.

Executor, etc.,
may be sued for
waste or tres-
pass of decedent

SEC. 4. Any person or his personal representative may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Surviving part-
ner to settle up
business, etc.

SEC. 5. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory and be appraised as other property. The surviving partner must settle the affairs of the partnership without delay and account with the executor or administrator, and pay over such balances as may from time to time be payable to him in right of the decedent. Upon the application of the executor or administrator, the court or judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Actions on bond
of executor, etc.

SEC. 6. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

What executors
are not parties
to actions.

SEC. 7. In action by or against executors, it is not necessary to join those as parties who may have been appointed by the court but who have not qualified.

May compound.

SEC. 8. Whenever a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approbation of the court or judge, may compound with him and give a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just, and for the best interests of the estate.

Recovery of
property fraudu-
lently disposed
of by testator.

SEC. 9. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his lifetime, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate

so fraudulently conveyed, and may also for the benefit of the creditors sue for and recover all goods, chattels, rights or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 10. No executor or administrator is bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor as the court or judge shall direct.

When executor to sue, etc.

SEC. 11. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the court; and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator.

Disposition of estate recovered.

CHAPTER IX.

Of the Conveyance of Real Estate by Executors and Administrators in Certain Cases.

SEC. 1. When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, and in all cases when such decedent, if living, might be compelled to make such conveyance, the court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Executor to complete contracts for sale of real estate.

SEC. 2. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court, or judge, must appoint a time and place for hearing the petition, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate, or by posting notices in at least three public places in the county.

Petitioner for executor to make conveyance and notice of hearing.

Interested parties may contest.

SEC. 3. At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof by affidavit or otherwise of the due publication of the notice or posting thereof, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Conveyances, when ordered to be made.

SEC. 4. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court and recorded.

Execution of conveyance and record thereof.

SEC. 5. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the recorder of the county where the lands lie, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Rights of petitioner to enforce contract

SEC. 6. If, upon a hearing, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract, is found to be doubtful, the court must dismiss the petition without prejudice to the right of the petitioner, who may, at any time within six months thereafter, proceed by action to enforce a specific performance thereof.

Effect of conveyance.

SEC. 7. Every conveyance made in pursuance of a decree as provided in this Chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself were still living and executed the conveyance.

Effect of recording a copy of the decree.

SEC. 8. A copy of the decree for a conveyance, as provided in this Chapter, duly certified and recorded in the office of the recorder of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 9. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

Recording decree does not supersede power of court, etc.

SEC. 10. If the person entitled to the conveyance dies before the commencement of proceedings therefor under this Chapter, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator, for their benefit.

Where party to whom conveyance to be made is dead.

SEC. 11. The decree provided for in this Chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

Decree may direct possession to be surrendered.

CHAPTER X.

Accounts, and the Payment of Debts.

SEC. 1. No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, expressing the consideration therefor is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

When executor or administrator personally liable.

SEC. 2. Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interests, profits and income of the estate.

Executor to be charged with all estate, etc.

SEC. 3. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss if the sale has been justly made.

Not to profit or lose by estate.

Uncollected
debts without
fault.

SEC. 4. No executor nor administrator is accountable for any debts due the decedent, if it appears that they remain uncollected without his fault.

Compensation
of the executor
and adminis-
trator.

SEC. 5. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, including reasonable fees paid to attorneys for conducting the necessary proceedings or suits in courts, and for his services such fees as provided in this Chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless, by a written instrument, filed in the court, he renounces all claim for compensation provided for by the will.

Not to purchase
claims against
estate.

SEC. 6. No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

Executors' and
administrators'
commissions.

SEC. 7. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above ten thousand dollars, and not exceeding twenty thousand dollars, at the rate of four per cent.; for all above twenty thousand dollars, and not exceeding fifty thousand dollars, at the rate of three per cent.; for all above fifty thousand dollars, and not exceeding one hundred thousand dollars, at the rate of two per cent.; and for all above one hundred thousand dollars, at the rate of one per cent. The same commissions shall be allowed to administrators. In all cases, such further allowance may be made as the court may deem just and reasonable for any extraordinary service, but the total amount of such extra allowance must not exceed one-half the amount of commissions allowed by this section. Where the property of the estate is distributed in kind, and involves no labor beyond the custody and distribution of the same, the commission shall be computed on all the estate above the value of twenty thousand dollars at one-half of the rates fixed in this section. All contracts between an executor or administrator and an heir, devisee, or legatee, for a higher compensation than that allowed by this section, shall be void; *Provided*, This act shall not apply to estates now in course of administration, except where, and to the extent

that, such estates consists of bonds and other securities, to be distributed without extra expense in an administration.

Accounting and Settlements by Executors and Administrators.

SEC. 8. Six months after his appointment, and at any time when required by the court, either upon his own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Exhibit of receipts and disbursements, and claims allowed.

SEC. 9. If the executor or administrator fails to render an exhibit for six months after his appointment, the court or judge must cause a citation to be issued requiring him to appear and render it.

Citation to appear and render account.

SEC. 10. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the court, or judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Petition for citation to render final or other account.

SEC. 11. If the court or judge is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear, at some day to be named in the citation, and render an exhibit as prayed for.

Citation to account on application.

SEC. 12. When an exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect or has wasted or embezzled or mismanaged the estate, his letters must be revoked.

Objections to account, who may file.

SEC. 13. If any executor or administrator neglects or refuses to appear and render an exhibit after having been duly cited, an attachment may be issued against him, and such exhibit enforced, or his letters may be revoked in the discretion of the court.

Attachment for not obeying citation.

To render accounts at expiration of term.

SEC. 14. Within thirty days after the expiration of the time mentioned in the notice to creditors within which claims must be exhibited, every executor or administrator must render a full account and report of his administration. If he fails to present his account the court or judge must compel the rendering of the account by attachments, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account must exhibit all debts which have been presented and allowed during the period embraced in the account.

Executor to account after his authority revoked.

SEC. 15. When the authority of an executor or administrator ceases, or is revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revoking authority of executor, when

SEC. 16. If the executor or administrator resides out of the county or absconds or conceals himself so that the citation cannot be personally served, and neglects to render an account within thirty days after the time prescribed in this Chapter, or if he neglects to render an account within thirty days after being committed where the attachment has been executed, his letters must be revoked.

To produce and file vouchers, which remain in court.

SEC. 17. In rendering his account the executor or administrator must produce and file vouchers for all charges, debts, claims and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file. If a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Vouchers for items less than twenty dollars, when accepted.

SEC. 18. On the settlement of his account he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath positive to the fact of payment, specifying when, where and to whom it was made, but such allowances in the whole must not exceed five hundred dollars against any one estate, and if upon such settlement of accounts, it appear that debts

against the deceased have been paid without the affidavit and allowance prescribed by statute, or Sections 5, 6 and 7, Chapter VI., of this Act, and it shall be proven by competent evidence to the satisfaction of the court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments, or set off, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

SEC. 19. When any account is rendered for settlement, the court, or judge, must appoint a day for the settlement thereof; the clerk must thereupon give notice thereof by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. The court, or judge, may order such further notice to be given as may be proper.

Day of settlement to be appointed, and notice thereof.

SEC. 20. If the account mentioned in the preceding section be for a final settlement, and a petition for the final distribution of the estate be filed with said accounts, the notice of the settlement must state those facts, which notice must be given for the length of time and in the manner prescribed in Section 25 of Chapter VII. of this Act. On the settlement of said account, distribution and partition of the estate to all entitled thereto, may be immediately had, without further notice or proceedings.

Final settlement, partition and distribution made at same time.

SEC. 21. On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Interested party may file exceptions to account.

SEC. 22. All matters, including allowed claims not passed upon on the settlement of any former accounts, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may account one or more referees to examine the accounts, and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

All matters may be contested by the heirs. Hearing.

SEC. 23. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saying, however, to all persons laboring under any legal disability, their right to move for cause to re-open and examine the account, or to proceed by action against the

Settlement of accounts to be conclusive, when and when not.

executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of the account is *prima facie* evidence of its correctness.

Proof of notice
of settlement of
accounts.

SEC. 24. The account must not be allowed by the court until it is first proved that notice has been given as required by this Chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Sale of personal
property.

SEC. 25. Whenever it appears to the court on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Moneys invested
by order of
court.

SEC. 26. Pending the settlement of any estate, on the petition of any party interested therein, and upon good cause shown therefor, the court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or other good securities to be approved by the court or judge. Such order can only be made after publication of notice of the petition in some newspaper, to be designated by the court or judge.

The Payment of Debts of the Estate.

Order in which
debts may be
paid.

SEC. 27. The debts of the estate, subject to the provisions of this Act pertaining to liens must be paid in the following order:

1. Funeral expenses;
2. The expenses of the last sickness;
3. All debts which were liens on the property of the decedent at the time of his death;
4. All other demands against the estate.

Where property
insufficient to
pay liens.

SEC. 28. The preference given in the preceding section to liens only extend to the proceeds of the property affected by the liens, and to the extent thereof. If the proceeds of such property is insufficient to pay the liens, the part remaining unsatisfied must be classed with other demands against the estate.

SEC. 29. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid.

Estate insufficient, a dividend to be paid.

SEC. 30. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this Chapter, the payment has been ordered by the court.

Funeral expenses, and of last sickness.

SEC. 31. Upon the settlement of the accounts of the executor or administrator, as required in this Chapter, the court must make an order for the payment of the debts, as circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been made and that he has fully complied with the decree of the court.

Order for payment of debts and discharge of executor, etc.

SEC. 32. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof or such part of the same as the holder would be entitled to if the claim were due, established or absolute, must be paid into the court and there remain to be paid over to the party when he becomes entitled thereto, or if he fails to establish his claim, to be paid over or distributed as the circumstances of the case require. If any creditor whose claim has been allowed but is not yet due, appears and assented to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this Section are not to be made when the estate is insolvent, unless a *pro rata* distribution is ordered.

Provision for disputed and contingent claims.

SEC. 33. When a decree is made by the court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon. An execution may be issued on such decree, as upon a judgment in the court, in favor of each creditor, and the same proceedings may be had under

After decree for payment of debts, executor personally liable to creditors.

such execution as under execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

Claims not included in order for payment of debts, how disposed of.

SEC. 34. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees or legatees, to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in Sections 1 and 2, Chapter VI. of this Act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Order for payment of legacies and extension of time.

SEC. 35. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled as provided in the next Chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable, for a final settlement of the estate.

Final account, when to be made.

SEC. 36. At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account, and pray a settlement of his administration.

Neglect to render final account how treated.

SEC. 37. If he neglects to render his account, the same proceedings may be had as prescribed in this Chapter in regard to the first account to be rendered by him, and all the provisions of this Chapter relative to the last mentioned account shall apply to his account presented for final settlement, except the notice of settlement, which shall be as prescribed in Section 20 of this Chapter.

CHAPTER XI.

Of the Partition, Distribution and Final Settlement of Estates.

SEC. 1. At any time after the lapse of four months from the issuing of letters testamentary, or of administration, any heir, devisee, or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Payment of legacies upon giving bonds.

SEC. 2. Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Notice of application for legacies.

SEC. 3. The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee or legatee may make a similar application for himself.

Executor or other person may resist application.

SEC. 4. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

Decree prayed for to require bond, which must be given.

First—Each heir, legatee or devisee obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the court or judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

Second—The executor or administrator to deliver to the heir, legatee or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof, designating it. If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings shall be paid by the applicant, or

May order whole or part of share to be delivered. When partition necessary, how made. Costs.

if there be more than one, shall be apportioned equally among them.

Order for payment of bond, and suit thereon.

SEC. 5. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed an action may be maintained by the executor or administrator on the bond.

Distribution on Final Settlement.

Distribution of estate, how made and to whom.

SEC. 6. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, and the issue of other children, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court, and included in the order or decree, or the court or judge may order notice of the settlement of such supplementary accounts, and refer the same as in other cases of the settlement of accounts.

What the decree must contain, and is final.

SEC. 7. In the order or decree, the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, and sue for in any court of competent jurisdiction and recover their respective shares from the executor or administrator, or any

person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal.

SEC. 8. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this Territory, leaving a will which has been duly proved or allowed in the State of his residence, and an authenticated copy thereof has been admitted to probate in this Territory, and it is necessary, in order that the estate or any part thereof, may be distributed according to the will, that the estate in this Territory should be delivered to the executor or administrator in the State or place of his residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this Territory, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the court.

Distribution when decedent was not a resident of this Territory.

SEC. 9. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication as the court may direct, and for such time as may be ordered. If partition be applied for, as provided in this Chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

Decree to be made only after notice.

SEC. 10. Before any decree of distribution of an estate is made, the court must be satisfied, by the oath of the executor or administrator, or otherwise, that all Territorial, county, and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

No distribution till all taxes on personal property are paid.

Distribution and Partition.

SEC. 11. When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to

Estates in commission. Commissioners.

be appointed commissioners for that purpose by the court, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

Partition and notice thereof, and the time of filing petition.

SEC. 12. Such partition may be ordered and had in the probate court on the petition of any person interested. But before commissioners are appointed, or partition ordered by the court as directed in this Chapter, notice thereof must be given to all persons interested who reside in this Territory, or to their guardians and to the agents, attorneys, or guardians, if any in this Territory, of such as reside out of this Territory, either personally or by public notice as the court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

Estate in different counties, how divided.

SEC. 13. If the real estate is in different counties, the court may, if deemed proper, appoint commissioners who shall make division of such real estate whenever situated within this Territory.

Partition may be made although some of the heirs, etc.

SEC. 14. Partition or distribution of the real estate may be made as provided in this Chapter, although some of the original heirs, legatees, or devisees, may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares to be set out by metes and bounds.

SEC. 15. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes or bonds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Whole estate may be assigned to one in certain cases.

SEC. 16. When the real estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and among children preferring

the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

SEC. 17. When any tract of land or tenement is of greater value than any one's share in the same estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others, such sums as the commissioners shall award, to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Payment for
equality of par-
tition, by whom
and how.

SEC. 18. When it appears to the court from the commissioners' report that it cannot otherwise be fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported and confirmed, in the same manner and under the same requirements as provided in Chapter VII. of this Act relating to "The sale of real estate interests therein, and confirmation thereof."

Estate may be
sold.

SEC. 19. Before any partition is made or any estate divided, as provided in this Chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and

To give notice
to all parties be-
fore partition,
etc.

take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

To make report and partition to be recorded.

SEC. 20. The commissioners must report their proceedings, and the partition agreed upon by them to the court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the clerk under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

When commissioners to make partition are not necessary.

SEC. 21. When the court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

Advancements made to heirs.

SEC. 22. All questions as to advancements made, or alleged to have been made, by the decedent to his heirs may be heard and determined by the court and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the court, or in case of appeal of the district court, is binding on all parties interested in the estate.

Agents for Absent or Interested Parties.—Discharge of Executor or Administrator.

Court may appoint agent to take possession for absentees.

SEC. 23. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this Chapter, to any person residing out of and having no agent in this Territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Agent to give bond, and his compensation.

SEC. 24. The agent must execute a bond to the Territory of Utah, to be approved by the court or judge, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 25. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the county treasury of the county wherein administration is had. When the payment is made, the agent must take from the treasurer duplicate receipts, one of which he must file in the office of the county clerk of such county.

Unclaimed estate, how disposed of.

SEC. 26. The agent must render to the court appointing him, annually, an account, showing:

When real and personal property of absentee to be sold.

1. The value and character of the property received by him, which portion thereof is still on hand, what sold and for what;

2. The income derived therefrom;

3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid;

4. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid.

When filed, the court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the county treasury.

SEC. 27. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale, as required in the preceding sections, and may be sued thereon by any person interested.

Liability of agent on his bond.

SEC. 28. When any person appears and claims the money paid into the treasury, the court making the distribution must inquire into such claim, and being first satisfied of his right thereto must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the county clerk must draw his warrant on the county treasurer for the amount.

Certificate to claimant.

SEC. 29. When the estate has been fully administered, and it is shown by the executor, or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required

Final settlement, decree, discharge.

of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Discovery of property.

SEC. 30. The final settlement of an estate, as in this Chapter provided, shall not prevent a subsequent issue of letters testamentary, or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it becomes necessary or proper for any cause that letters should be again issued.

CHAPTER XII.

Of Orders, Decrees, Process, Minutes, Records, Trials and Appeals.

Orders and decrees to be entered in minutes.

SEC. 1. Orders or decrees made by the court, or judge, in probate proceedings, need not recite the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it shall only be necessary that they contain the matters ordered or adjudged, except as otherwise provided in this Act. All orders and decrees of the court or judge must be entered at length in the record books of the court provided and kept for that purpose.

How after publication to be made.

SEC. 2. When any publication is ordered, such publication must be made daily or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this Act. The court, or judge, may, however, order a less number of publications during the period.

Recorded decree or order to impart notice from date of filing.

SEC. 3. When it is provided in this Act that any order or decree of the court, or judge, or a copy thereof, must be recorded in the office of the county recorder from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

Citation, how directed and what to contain.

SEC. 4. Citations must be delivered to the person to be cited, signed by the clerk and issued under the seal of the court, and must contain:

1. The title of the proceeding;
2. A brief statement of the nature of the proceeding;
3. A direction that the person cited appear at a time and place specified.

SEC. 5. The citation may be issued by the clerk upon the application of any party without an order of the judge, except in cases in which such order is by the provisions of this Act expressly required.

Citation, how issued.

SEC. 6. The citation must be served in the same manner as a summons in a civil action.

Citation, how served.

SEC. 7. When personal notice is required, and no mode of giving it is prescribed in this Act, it must be given by citation.

Personal notice given by citation

SEC. 8. When no other time is specially prescribed in this Act, citations must be served at least five days before the return day thereof.

Citation to be served five days before return.

SEC. 9. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale or notice of a petition for the confirmation thereof; it is sufficient to refer to the description contained in the publication of the first notice, as being proved and on file in the court.

One description of real estate published to be sufficient.

SEC. 10. Except as otherwise provided in this Act, the provisions of the Code of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this Act.

Rules of practice generally.

SEC. 11. The provisions of the Code of Civil Procedure relative to new trials, except in so far as they are inconsistent with the provisions of this Act, apply to the proceedings mentioned in this Act.

New trials.

SEC. 12. All issues of fact joined in probate proceedings must be tried in conformity with the requirements of Chapter II. of this Act, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein, on the issue joined as well as for costs, may be entered and enforced by execution or otherwise by the court, as in civil actions.

Issues joined in court, how tried and disposed of.

SEC. 13. Either party may move for a new trial upon the same grounds and errors, and in like manner, as provided for civil actions tried by the district court without a jury.

New trial may be moved, how, etc.

SEC. 14. At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration, for sales of real estate, and confirmations thereof, settlements, partitions and distributions of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be

Court to appoint attorney for minors and absent heirs, devisees, legatees, or creditors. When and what compensation.

notified thereof, the court may, in its discretion, appoint some competent attorney-at-law to represent in all such proceedings the devisees, legatees, heirs or creditors of the decedent who are minors and have no general guardian in the county, or who are non-residents of the Territory, and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties so far as known for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary, the court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

Decree relative
to homestead,
effect thereof.

SEC. 15. When a judgment or decree is made, setting apart a homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the recorder of the county in which the property is situated.

Costs, by whom
paid in certain
cases.

SEC. 16. When it is not otherwise prescribed in this Act, the probate court, or the district court on appeal, or the supreme court on an appeal from the district court may in its discretion order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the probate court.

Executor to be
removed when
committed for
contempt.

SEC. 17. Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the court, or judge, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto executor, administrator, or guardian in his stead.

Service upon
guardian.

SEC. 18. Whenever an infant, insane, or incompetent person has a guardian of his estate residing in this Territory, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person in which the ward is interested, is

equivalent to service upon the ward, and it is the duty of the guardian to attend to the interest of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

SEC. 19. If any person has died, or shall hereafter die, who at the time of his death was the owner of a life estate, which terminates by reason of the death of such person, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the probate court of the county in which the property is situated, his verified petition, setting forth such facts, and thereupon, and after such notice, by publication or otherwise, as the court may order, the court shall hear such petition and the evidence offered in support thereof, and if, upon such hearing, it shall appear that such life estate of such deceased person absolutely terminated by reason of his death, the court shall make a decree to that effect, and thereupon a certified copy of such decree may be recorded in the office of the county recorder, and thereafter shall have the same effect as a final decree of distribution so recorded.

Termination of
life estate.

CHAPTER XIII.

Of Guardian and Ward.

SEC. 1. The probate court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the Territory and have estate within the county. Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment, the court must cause such notice as such court deems reasonable to be given to any person having the care of such minor, and to such relatives of the minor residing in the county as the court may deem proper.

Judge to appoint
guardians, when
and upon what
petition.

SEC. 2. If the minor is under the age of fourteen years, the court may nominate and appoint his guardian. If he is fourteen years of age, he may nominate his

When minor
may nominate
guardian; when
not.

guardian, and who, if approved by the court, must be appointed accordingly.

When appointment may be made by judge.

SEC. 3. If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the Territory, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court or judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years.

Nomination by minors after arriving at fourteen.

SEC. 4. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the court.

Father or mother entitled to guardianship.

SEC. 5. The father of the minor, if living, and in case of his decease, the mother, being themselves respectively competent to transact their own business and not otherwise unsuitable, must be entitled to the guardianship of the minor.

Minor having no father or mother.

SEC. 6. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the same.

Powers and duties of guardian.

SEC. 7. Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

Bond of guardian, conditions of.

SEC. 8. Before the order appointing any person guardian under this Chapter takes effect, and before letters issue, the court or the judge must require of such persons a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the court or judge may order;

2. To dispose of and manage the estate according to law, and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward;

3. To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months

after his appointment, and at such other times as the court directs, and at the expiration of his trust, to settle his accounts with the court or judge, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form, the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be indorsed thereon, that he will perform the duties of his office, as such guardian, according to law.

SEC. 9. When any person is appointed guardian of a minor, the probate court, or judge may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which, he and the sureties on his bond shall be responsible.

Conditions may be inserted in order appointing guardian.

SEC. 10. All letters of guardianship issued, and all guardians' bonds executed under the provisions of this Chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the probate court having jurisdiction of the persons and estates of the wards.

Letters of guardianship and bond to be recorded.

SEC. 11. If any minor having a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the probate court; and the charges therefor may be allowed accordingly, in the settlement of the account of his guardian.

Maintenance of minor out of income of his own property.

SEC. 12. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the probate court, except so far as their powers and duties are legally modified, enlarged or changed by the will by which such guardian was appointed.

Guardian to give bond. Powers limited.

Powers of courts
to appoint, etc.,
not impaired.

SEC. 13. Nothing contained in this Chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

Guardians of Insane and Incompetent Persons.

Guardians of
insane and other
incompetent
persons.

SEC. 14. Where it is represented to the probate judge upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge or court must cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced on the hearing.

Appointment by
judge after
hearing.

SEC. 15. If, after a full hearing and examination upon such petition, it appears to the probate court that the person in question is incapable of taking care of himself and managing his property, such court must appoint a guardian of his person and estate, with the powers and duties in this Chapter specified.

Powers and
duties of such
guardians.

SEC. 16. Every guardian appointed as provided in the preceding section has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged; and he must give bond to such ward, in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Petition for
restoration to
capacity.

SEC. 17. Any person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the probate court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is then sane and competent. Upon receiving the petition the court must appoint a day for a hearing before the court, and, if the petitioner request it, shall order an investigation before the court. The court shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the person so declared insane or incompetent, and, in the discretion of the court, any other person may contest the right to the relief demanded. Witnesses' may be required

to appear and testify as in civil cases and may be called and examined by the court on its own motion. If it be found that the person be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardian of such person, if such person be not a minor, shall cease.

The Powers and Duties of Guardians.

SEC. 18. Every guardian appointed under the provisions of this Chapter, whether for a minor or any other person, must pay all just debts due from the ward, out of his personal estate, and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same in the manner provided in this Title for the sale of real estate of decedents.

Guardian to pay debts of ward out of ward's estate.

SEC. 19. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose.

Guardian to recover debts due his ward and represent him.

SEC. 20. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Guardian to manage his estate, maintain ward, and sell real estate.

SEC. 21. When a guardian has advanced for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate, or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects or refuses to furnish suitable and necessary maintenance, support or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such

Maintenance, support and education of ward, how enforced.

suitable and necessary maintenance, support or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

May assent to a partition of real estate.

SEC. 22. The guardian may join in and assent to a partition of the real estate of the ward, whenever such assent may be given by any person.

Guardian to return inventory of estate of ward.

SEC. 23. Every guardian must return to the probate court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. When the value of the estate exceeds the sum of twenty thousand dollars, semi-annual returns must be made to the probate court. The probate court may, upon application made for that purpose by any person, compel the guardian to render an account to the probate court of the estate of his ward. The inventories and accounts so to be returned or rendered, must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estates of decedents; such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the probate court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to, or acquired by any ward for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Appraisers to be appointed, etc.

Settlement of guardians.

SEC. 24. The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the probate court for settlement and allowance.

Allowance of account of joint guardians.

SEC. 25. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any of them.

Expenses and compensation of guardians.

SEC. 26. Every guardian must be allowed the amount of his reasonable expense incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

The Sale of Property and Disposition of the Proceeds.

SEC. 27. When the income of an estate under guardianship is sufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose upon obtaining an order therefor.

May sell property in certain cases.

SEC. 28. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive property, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

Sale of real estate to be made upon order of court.

SEC. 29. If the estate is sold for the purposes mentioned in this Chapter, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Application of proceeds of sales

SEC. 30. If the estate is sold for the purposes of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

Investment of proceeds of sales

SEC. 31. To obtain an order for such sale, the guardian must present to the court in which he was appointed guardian, a verified petition therefor; setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Order for sale, how obtained.

SEC. 32. If it appears to the court from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real or personal estate should be sold, the court must thereupon make an order, directing the next of kin of the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four, nor more than ten weeks from the time of making such order, to show cause why an order should

Notice to next of kin, how given.

not be granted for the sale of such estate. If it appear that it is necessary, or would be beneficial to the ward to sell the personal estate or some part of it, the court must order the sale to be made.

Copy of order to be served, published, or consent filed.

SEC. 33. A copy of the order must be personally served on the next of kin of the ward and on all persons interested in the estate, at least ten days before the hearing of the petition, or must be published at least three successive weeks in a newspaper having general circulation in the county, or in such newspaper as may be specified by the court in the order. If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

Hearing of application.

SEC. 34. The probate court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service of publication of the order, must hear and examine the proofs and allegations of the petitioner and of the next of kin, and all other persons interested in the estate who oppose the application.

Who may be examined on such hearing.

SEC. 35. On the hearing, the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the probate court in the same manner and with like effect as in other cases provided for by law.

Costs to be awarded, to whom.

SEC. 36. If any person appears and objects to the granting of any order prayed for under the provisions of this Chapter, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Order of sale, to specify what.

SEC. 37. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof, should be sold, the court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

Bond before selling.

SEC. 38. Every guardian authorized to sell real estate must, before the sale, give bond to the ward, with sufficient surety, to be approved by the court, or judge, with condition to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this Chapter, and in Chapter VII. of this Act.

SEC. 39. All the proceedings under petition of guardians for sales of property of their wards, giving notice, and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, re-selling the same property, return of sale, and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as required by the provisions of this Act concerning estates of decedents, unless otherwise specially provided in this Chapter.

All proceedings for sale by guardians to conform to provisions relating to estates of decedents.

SEC. 40. No order of sale, granted in pursuance of this Chapter, continues in force more than one year after granting the same, without a sale being had.

Limit of order of sale.

SEC. 41. All sales of real estate of wards must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from date of sale, as in the discretion of the court is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes, and a mortgage on the real estate sold, with such additional security as the court deems necessary and sufficient to secure the prompt payment of the amount so deferred, and the interest thereon.

Conditions of sales of real estate of wards.

SEC. 42. The court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects as circumstances require.

Court may order the investment of money of the ward.

Non-Resident Guardians and Wards.

SEC. 43. When a person liable to be put under guardianship, according to the provisions of this Chapter, resides without this Territory and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the probate court of any county in which there is any estate of such absent person, for the appointment of a guardian, and if, after notice given to all interested, in such manner as such court orders, by publication or otherwise, and a full hearing and

Guardians of non-resident persons.

examination, it appears proper, a guardian for such absent person may be appointed.

Powers and duties of such guardians.

SEC. 44. Every guardian appointed under the preceding section, has the same powers and performs the same duties with respect to the estate of the ward found within this Territory, and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this Chapter.

Such guardians to give bonds.

SEC. 45. Every guardian must give bond to the ward in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian must be confined to such estate and effects as come to his hands in this Territory.

To what guardianship shall extend.

SEC. 46. The guardianship which is first lawfully granted of any person residing without this Territory, extends to all the estate of the ward within this Territory, and excludes the jurisdiction of the probate court of every other county.

Removal of non-resident ward's property.

SEC. 47. When the guardian and his ward are both non-residents, and the ward is entitled to property in this Territory, which may be removed to any State or foreign country, without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the State or foreign country of the residence of the ward, upon the application of the guardian to the probate judge of the county in which the estate of the ward, or the principal part thereof, is situated.

Proceedings on such removal.

SEC. 48. The application must be made upon ten days' notice to the resident executor, administrator or guardian, if there be such, and upon such application the non-resident guardian must produce and file a certificate, under the hand of the clerk and seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment;
2. That he entered upon the discharge of his duties;
3. That he is entitled, by the law of the State or foreign country, of his appointment, to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the clerk of the court having jurisdiction in the county of his residence, of the estates of persons under guardianship, or of the highest court of such country, attested by a minister, consul, or vice-consul of the United States, resident in such country,

that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward, without the appointment of any court. Upon such application, unless good cause to the contrary is shown, the court must make an order granting to such guardian leave to take and remove the property of his ward to the State or place of his residence, which is authority to him to sue for and receive the same in his own name for the use and benefit of his ward.

SEC. 49. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the court the receipt therefor of the foreign guardian of such ward.

Discharge of person in possession.

General and Miscellaneous Provisions.

SEC. 50. Upon complaint made to him by any guardian, ward, creditor or other person interested in the estate or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects, or an instrument in writing belonging to the ward or to his estate, the probate court, or judge, may cite such suspected person to appear before such court, and may examine and proceed with him on such charge in the manner provided in this Act with respect to persons suspected of and charged with concealing or embezzling the effects of a decedent.

Examination of persons suspected of defrauding ward, or, etc.

SEC. 51. When the guardian, appointed either by the testator or a court, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the probate court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the court may appoint another in the place of the guardian who resigned or was removed.

Removal and resignation of guardian and surrender of estate.

SEC. 52. The marriage of a minor ward terminates the guardianship of the person of such ward, but not the estate; and the guardian of an insane or other person may be discharged by the court, when it appears, on the appli-

Guardianship, how terminated.

cation of the ward or otherwise, that the guardianship is no longer necessary.

New bond, when required.

SEC. 53. The court may require a new bond to be given by a guardian whenever such court deems it necessary, and may discharge the existing sureties from further liability, after due notice given as such court may direct when it shall appear that no injury can result therefrom to those interested in the estate.

Guardian's bond to be filed. Action on.

SEC. 54. Every bond given by a guardian must be filed and preserved in the office of the clerk of the probate court of the county; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

Limitation of action on guardian's bond.

SEC. 55. No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within one year after such disability is removed.

Limitations of action for the recovery of property sold.

SEC. 56. No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within one year next after the removal thereof.

More than one guardian of a person may be appointed.

SEC. 57. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Power of judge at chambers,

SEC. 58. Any order appointing a guardian must be entered as, and become a decree of the court. The provisions of this Act relative to the estates of decedents, so far as they relate to the practice in the probate courts apply to proceedings under this Chapter.

Provision of Code of Civil Procedure, etc., to apply.

SEC. 59. The general provisions of the Code of Civil Procedure relative to the qualification and justification of sureties on undertakings are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

SEC 60. Chapter III. of Title XIV. of the Compiled Laws of Utah, entitled "Of the Proceedings in Probate Courts," and all amendments thereto, and Chapter II. of "An Act in relation to Guardian and Ward," approved February 20th, 1880, are hereby repealed, saving and excepting all rights and rights of action which have accrued, or may accrue under or by virtue of any of the provisions hereby repealed. All proceedings commenced; and all orders and decrees made, by virtue of any of the provisions of any law referred to in this Section before this Act takes effect, shall be continued and shall be made to conform as far as practicable to the provisions of this Act.

Repealing and
saving clause.

SEC. 61. This Act shall take effect and be in force on the first day of August, A. D. 1884.

When act takes
effect.

Approved March 12, 1884.

CHAPTER LVII.

OF GENERAL APPROPRIATIONS.

AN ACT making Appropriations for General Purposes.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah: That the following sums of money are hereby appropriated out of any money in the Territorial treasury not otherwise appropriated, for the objects hereinafter expressed:

- | | | |
|---|--|------------|
| 1 | For the salary of Territorial Superintendent of District Schools for 1884 and 1885, one-half to be paid each year, | \$1,000 00 |
| 2 | For salary of Auditor of Public Accounts for 1884 and 1885, one-half to be drawn each year, | 3,000 00 |
| 3 | For salary of Territorial Librarian for 1884 and 1885, one-half to be drawn each year, | 500 00 |
| 4 | For salary of Territorial Treasurer for 1884 and 1885, one-half to be drawn each year, | 1,500 00 |

- 5 For expenses of printing, and contingent expenses of Territorial School Superintendent's office for 1884 and 1885, one-half to be drawn each year, . . . \$ 500 00
- 6 For incidental expenses of the offices of Auditor, Treasurer, Librarian, Sealer of Weights and Measures and Recorder of Marks and Brands for 1884 and 1885, one-half to be drawn each year or so much thereof as may be necessary, 1,000 00
- 7 For rent of rooms for the last named officers for 1884 and 1885, one-half to be drawn each year, 1,440 00
- 8 To pay deficiency of witnesses in criminal cases and jurors in criminal cases for 1882 and 1883, as reported by the Auditor of Public Accounts, . . . 12,610 12
- 9 For the payment of witnesses in criminal cases, and jurors for the district courts of this Territory in criminal cases for the years 1884 and 1885, one-half to be drawn each year in equitable proportion to each district, to be determined by the Auditor of Public Accounts, . . . 40,000 00
Provided, That the above amount shall be drawn upon vouchers, duly authenticated for services as jurors, and for witnesses in cases in which the Territory is liable therefor.
- 11 To J. R. Wilkins, clerk of the Second Judicial District for attendance at court during the years 1882 and 1883, and for fees and other services during the same period as per bill rendered, . . . 1,017 15
- 12 To Benjamin Bachman, deputy clerk of the First Judicial District for attendance at court, during the years 1882 and 1883, and for fees and other services, during the same period, as per bill rendered, 549 70
- 13 To Samuel R. Thurman, for legal services, as per bill rendered, in the years 1882 and 1883, 500 00
- 14 To O. J. Averill, clerk of the Third Judicial District, for attendance at court during the years 1882 and 1883, and for

	blanks, books and furniture, and sundry other services during the same period as per bill rendered,	1,372 35
15	To Martin H. Peck, Sealer of Weights and Measures, for office rent and other expenses for removing scales and measures,	105 00
16	To the Omaha <i>Herald</i> , for books and stationery furnished the Third District Court,	151 00
17	To the <i>Deseret News</i> , for extra composition on school reports, 1882,	43 60
18	To W. C. Spence, for clerk hire in 1882,	5 50
19	To Thomas S. Higham, for clerk hire in 1882,	20 00
20	To John W. Turner, for services and expenses incurred in the prosecution and conviction of Fred Welcome, and in arresting cattle thieves in Colorado in 1882 and 1883,	1,705 50
21	To Jesse W. Fox, for services for ten years as Surveyor General, and rent of office for two years ending Dec. 31, 1883,	500 00
22	To A. C. Call, Sheriff of Rich County, for services in full to date,	100 00
23	To Messrs. Sheeks & Rawlins, for legal services rendered at the instance of the Auditor of Public Accounts in prosecuting civil suits for the Territory in 1882 and 1883,	1,000 00
24	To the Auditor of Public Accounts as a contingent fund for employing counsel when necessary in prosecuting delinquent collectors in 1884 and 1885,	1,000 00
	or so much thereof as may be necessary.	
24 a	To the Committee on the Revision and Compilation of the Laws, as follows:	
	To P. H. Emerson, chairman,	1,500 00
	To Arthur L. Thomas, secretary and treasurer,	1,250 00
	To Samuel R. Thurman,	1,000 00
	To Warren N. Dusenberry,	250 00
25	For the construction of a wagon road in Huntington Canyon, Emery County, to be drawn and expended under the direction of the county court of said county,	2,000 00

- Provided, That Emery County expend \$750 00 on said road in addition to the amount herein appropriated.*
- 26 To assist Sanpete County in the construction of a bridge across Sevier River, to be drawn and expended under the direction of the county court of Sanpete County, 600 00
Provided, That Sanpete County expend \$450 00, and Sevier County, \$150 00, in addition to the amount herein appropriated,
- 27 To Uintah and Wasatch Counties, for the construction of a wagon road and necessary bridges between the towns of Heber in Wasatch County, and Ashley in Uintah County, 3,000 00
 \$2,250 00 of which to be drawn and expended under the direction of the county court of Wasatch County, and \$750 00 to be drawn and expended under the direction of the county court of Uintah County.
Provided, That Wasatch County expend \$750 00, and Uintah County \$250 00 on said road, in addition to the amount herein appropriated.
- 28 For the repair of a road in Kanab Canyon, in Kane County, to be drawn and expended under the direction of the county court of said county, 1,500 00
- 29 To assist Box Elder County in the construction of a bridge across Bear River at a point known as Hampton's Station, to be drawn and expended under the direction of the county court of said county, 3,500 00
- 30 For the construction of a wagon road from Panguitch in Garfield, to Beaver City, in Beaver County, over a route known as Fremont's Pass, to be drawn and expended under the direction of the county court of Garfield County, 500 00
- 31 For the construction of a wagon road from Panguitch to Escalante in Garfield county,

- to be drawn and expended under the direction of the county court of said county, \$500 00
Provided, That Garfield County raise and expend on said road \$250 00 in addition to the amount herein appropriated.
- 32 To assist Utah County in the repair of the Spanish Fork Canyon road, in said county, to be drawn and expended under the direction of the county court of said county, 2,000 00
Provided, That Utah County expend on said road the sum of \$1,000 00 in addition to the amount herein appropriated.
- 33 To the Territorial library, to provide shelves print and arrange catalogues of books in the library, and the balance to be used in purchasing books for the library, 1,000 00
 Said amount to be drawn and expended under the direction of the Territorial Librarian, for the purposes hereinbefore mentioned.
- 34 To assist Morgan County in the construction of a bridge, near Morgan City, over the Weber River, 1,000 00
 To be drawn and expended under the direction of the county court of said county;
Provided, That Morgan County expend \$750 00 and Morgan City \$250 00 on said bridge in addition to the amount herein appropriated.
- 35 To Millard County, to aid in constructing a road from Deseret to Pleasant Valley, 750 00
 To assist said county in the repair of roads, near Cove Creek Fort, 250 00
 Said sums to be drawn and expended under the direction of the county court of said county.
- 36 To Ashton Nebeker, Collector of Kane County, for losses on Territorial taxes for the years 1877, 1878, 1879, 1880, 1881 and 1882, 20 00
- 36 a To W. D. Johnson, Jr., ex-deputy Collector of Kane County, for relief on account of delinquent taxes for 1882 and 1883, 38 00

37	To H. H. Cluff, ex-Collector of Utah County, on account of delinquent taxes for the years 1875-76-77 and '78,	300 00
38	To W. H. Clark, Collector of Sevier County, for relief on account of delinquent taxes, 1882 and 1883,	22 50
39	To L. H. Ridd, Jr., Collector of San Juan County, for relief on account of delinquent taxes for the years 1880-81-82,	46 25
40	To H. O. Crandall, ex-Collector of Emery County, for relief on account of delinquent taxes in 1881 and 1882,	58 00
41	To Archibald McKinnon, ex-Collector of Rich County, on account of delinquent taxes for the years 1875-76-77-78-79-80,	300 00
42	To J. D. Smith, Collector of Millard County, for relief on account of delinquent taxes for the years 1881 and 1882,	17 79
43	To Hyrum Belnap, Collector, and Gilbert Belnap, ex-Collector of Weber County, for relief on account of delinquent taxes for the years 1881 and 1882,	100 00
44	To Nephi W. Clayton, Auditor of Public Accounts, for extra services in examining court certificates,	400 00
45	To A. C. Emerson, Clerk of the First Judicial District,	321 40
46	To W. R. Judd, Assessor and Collector of Tooele County, for relief on account of delinquent taxes for the years 1879, 1880, 1881 and 1882,	65 00
47	For contingent expenses of the House for twenty-sixth session,	1,050 00
47 a	To Joseph A. West, in payment for two hundred copies of a new and revised map of Utah Territory, said map to be drawn to a scale of six miles to one inch, and to be delivered to the Territorial Treasurer for distribution,	1,600 00
48	For the construction of a wagon road from Kanarra, in Iron County, to Assay's Ranch, in Garfield County, to be drawn and expended under the direction of the county court of Iron County,	1,000 00
49	For widening and improving the road from Kanarra to St. George, to be drawn	*

	and expended under the direction of the county court of Washington County,	3,000 00
50	To assist in making a road from the head of Parowan Canyon, in Iron County, to Panguitch, in Garfield County, to be expended under the direction of the county court,	500 00
51	To assist in opening and improving a wagon road through Sardine Canyon, between Cache and Box Elder Counties, to be expended under the direction of the county court of Cache County,	1,000 00
52	To assist in improving the wagon road through Parley's Park, in Summit County, to be expended under the direction of the county court of said county,	500 00
53	To A. E. Merriam, Collector of Sanpete County, for uncollectible Territorial taxes for the years 1881-2,	36 30
54	For the purpose of educating deaf mutes in the University of Deseret, to be drawn and expended by the Chancellor and Board of Regents,	4,000 00
55	For the expense incurred in the reception and entertainment of the Wyoming Legislature, to be drawn and expended by E. G. Woolley, chairman of committee,	553 75
56	To James Jack, for amounts paid for collecting fines and forfeitures,	553 95
57	To Hiram Belnap, for uncollectible taxes for 1883,	91 98
58	For completing and furnishing the Territorial Insane Asylum, to be drawn and expended under the direction of the Board of Directors,	51,697 48
59	To John W. Taylor, for services as Minute Clerk for the Twenty-Sixth (26) Session,	300 00
60	To Moroni L. Pratt, Usher, for services for the Twenty-sixth (26) Session,	240 00
61	For contingent expenses of the Council during the Twenty-sixth (26) Session, to be drawn on the order of L. J. Nuttal, Jr., Sergeant-at-Arms, and to be disbursed by him on bills certified to by the President of the Council,	704 50

	For Wm. Reeves, for uncollectible taxes to be credited on account due the Territory by him,	567 82
62.	To assist in improving the wagon road through Parley's Canyon, to be drawn and expended by the county court of Salt Lake County,	500 00
63	For repairing Sevier bridge in Juab Co., and improving the approaches thereto, to be drawn and expended under the direction of the county court of Juab County,	750 00
64	To be drawn on the order of the Governor, to pay a messenger and other expenses of the Executive Office for the years 1884 and 1885,	2,000 00
65	To Joseph A. West, for services as Minute Clerk for 26th Session,	300 00
66.	To George Woolley, for services as Usher for 26th Session,	240 00
67	To reprint the Record of Marks and Brands published since the last compilation thereof, and to publish the Marks and Brands recorded since the publication of the last sheet, also for the publication of Marks and Brands that may be recorded prior to the next session of the Legislative Assembly,	1,500 00
	Or so much thereof as may be necessary.	
68	To T. E. Taylor, Public Printer,	3,275 74
69	To <i>Herald</i> Printing and Publishing Co.	132 70
	<i>Provided</i> , That the provisions of Section 1 of an Act defining how appropriations shall be paid, approved March 9, 1882, shall not apply to the appropriations herein to the Territorial Insane Asylum.	

Approved March 13, 1884.

JOINT RESOLUTION.

Continuing the Committee on Revision and Compilation.

Resolved, by the Governor and Legislative Assembly of the Territory of Utah: That the committee on revision and compilation of the laws of the Territory of Utah created by Chapter XXXVII. of the Laws of 1882, be and they are hereby authorized and directed to continue their labors until the close of the present session of the Legislative Assembly of this Territory, with such compensation as may be provided by said Legislative Assembly.

Approved Feb. 25, 1884.

JOINT RESOLUTION.

Relating to the Redemption of Territorial Warrants.

Resolved, by the Governor and Legislative Assembly of the Territory of Utah: That the Territorial treasurer be and he is hereby forbidden to redeem any warrant issued prior to January first, 1876. In case any warrants issued as aforesaid are presented to the treasurer for payment, it shall be his duty to register the same, separately from the registry of other warrants, and report the same to the next succeeding Legislative Assembly.

Approved March 13, 1884.

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